DOCUMENT RESUME

ED 408 847 FL 024 605

TITLE	Handbook on Planning for Limited English Proficient (LEP) Student Success.
INSTITUTION	Colorado State Dept. of Education, Denver.
PUB DATE	Mar 97
NOTE	126p.
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC06 Plus Postage.
DESCRIPTORS	*Academic Achievement; Accreditation (Institutions); *Compliance (Legal); Educational Planning; Elementary Secondary Education; *English (Second Language); Federal Regulation; Gifted; Inservice Teacher Education; Language Role; Legal Problems; *Limited English Speaking; Native Language Instruction; Organizational Communication; Professional Development; Program Administration; *Program Implementation; School Districts; School Responsibility; Second Language Instruction; Special Education; State Regulation; Statewide Planning; Teaching Methods
IDENTIFIERS	*Colorado

ABSTRACT

The handbook is designed to help Colorado school systems address the linguistic and educational needs of limited-English-proficient (LEP) students and to provide administrators, school boards members, and educators with resources for understanding state and federal requirements. It is intended to help design and establish local policies and practices, design and implement instructional programs, support teacher and staff professional development, maintain sound coordination and communication practices, and evaluate their efforts to educate LEP students. Chapters: define key terms and acronyms and offer a historical perspective on issues leading to the handbook's development; outline legal and judicial mandates concerning the education of LEP students; discuss mandates with a direct bearing on assuring equity and educational opportunity; discuss development of instructional strategies to meet LEP students' linguistic needs; suggest processes for LEP student identification, assessment, service delivery, placement review, and reclassification/exit; discuss instructional strategies and methods for content-area and bilingual/English-as-a-Second-Language (ESL) teachers; examine staff development at all levels and teacher certification issues; offer ideas on coordination with federal programs, state initiatives, and local resources; and outline program evaluation procedures. Resource information is appended. Contains 59 references. (MSE)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

FL

ED 408 847

Handbook on Planning for Limited English Proficient (LEP) Student Success

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Karen Hoff

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

cde

Colorado Department of Education

March, 1997

BEST COPY AVAILABLE

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

STATE OF COLORADO

COLORADO DEPARTMENT OF EDUCATION

201 East Colfax Avenue
Denver, CO 80203-1704
FAX (303) 830-0793

Richard A. Laughlin
Acting Commissioner
of Education

March 11, 1997

Dear Superintendent/Administrator/Educator:

The purpose of this manual is to support local school districts in their efforts to serve the unique needs of limited English proficient (LEP) students in reaching the high academic standards adopted by local boards of education and the Colorado State Board of Education. While LEP students often have the linguistic advantage of understanding more than one language, they lack the English language skills necessary to academically succeed and to meaningfully participate in schools' educational programs.

Because LEP students generate funds for schools that are to be used to meet their educational needs with respect to your responsibility for providing an appropriate alternative language program for LEP students even after state-funded English Language Proficiency Act (ELPA) funds have expired, your knowledge of resources and strategies to enable your district to educate LEP students to become successful and productive is essential.

The intent of this document is to provide guidance towards applicable legal requirements and sound educational approaches to meet them. Several Colorado and national initiatives are making it easier to accomplish this task as you will see in the pages to follow. Here are a few suggestions that may help you get started:

1. Review this manual.
2. Review the school district services to LEP students.
3. Examine district demographics and achievement results.
4. Use the building accreditation/accountability plan to set goals for LEP students.
5. Assess LEP students' linguistic and educational needs.
6. Collaborate on professional development, materials development, and program planning with other schools and districts serving LEP students.
7. Take advantage of resources to enhance services to LEP students.

We at CDE are ready to assist in efforts for providing an equal educational opportunity enabling Colorado's LEP students to reach the highest standards. Best wishes in this important endeavor! For assistance, please call Dr. Sue Schafer at (303) 866-6748.

Sincerely,

Richard A. Laughlin
Acting Commissioner of Education

Handbook on Planning for Limited English Proficient (LEP) Student Success

Colorado Department of Education
March, 1997

Planning for Limited English Proficient (LEP) Student Success

Sponsored by:

Colorado Department of Education
201 East Colfax Avenue
Denver, Colorado 80203

Susan P. Schafer
Director
School Effectiveness Unit

Arthur J. Ellis
Assistant Commissioner
Office of Educational Services

Richard A. Laughlin
Acting Commissioner of Education State of Colorado

CDE

1997

Colorado State Board of Education

Patricia M. Hayes, Chairman
6th Congressional District, Aurora

Thomas M. Howerton, Vice Chairman
5th Congressional District, Colorado Springs

Pat M. Chlouber
3rd Congressional District, Pueblo

John Evans
Member-at-Large

Patti Johnson
2nd Congressional District, Broomfield

Clair Orr
4th Congressional District, Kersey

Gully Stanford
1st Congressional District, Denver

Planning for Limited English Proficient (LEP) Student Success

TASK FORCE

Ms. Lois Adams (Colorado Department of Education)

Ms. Anna Fernandez (Colorado Community College and Occupational Education System)

Dr. John Golden (Aurora Public Schools)

Dr. Patsy Jaynes (Jefferson County School District)

Mr. Mike Maldonado (Centennial School District)

Dr. Susan P. Schafer, Chair (Colorado Department of Education)

Dr. Siri Vongthieres (Colorado Department of Education)

CONTRIBUTING ORGANIZATIONS

Association of Directors of Bilingual Education (ADOBE)

Colorado Department of Education (CDE)

Office of the Colorado Attorney General

Office for Civil Rights (OCR), U.S. Department of Education

WRITER/EDITOR

Dr. Susan Durón (META Associates)

Table of Contents

1 Introduction **1**

Background Information and Historical Perspective 2
Key Terminology in Planning for LEP Student Success 3

2 Legal Frameworks **7**

Federal Requirements 7
State Requirements 8
Gifted and Talented/Special Education Issues 12

Guidelines for Gifted and Talented 12
Guidelines for Special Education 14

3 School and School District Accountability/Accreditation Requirements **18**

4 Language Development and Second Language Acquisition **24**

First Language Development 24
Acquiring a Second Language 25
Language Use 27
Language Acquisition Classrooms 31

5 Educational Decision Making Processes for LEP Students **33**

Procedures for the Identification and Assessment of LEP Students 34

Step 1 - Identification of PHLOTE students 34
Step 2 - Assessment of language proficiency 35
Language proficiency in English 35
Language proficiency in the students' home language 36
Step 3 - Program placement 37
Step 4 - Student evaluation 37
Step 5 - Program evaluation 38

Strategies for the Identification, Assessment, Service Delivery, Placement, Review, and Reclassification/Exit of LEP Students 39

Strategies for identification 39
Strategies for assessment 40
Strategies for service delivery 42
Strategies for student evaluation including continuous review, reclassification, and exit procedures 45

6 Effective Instructional Practices for LEP Students **47**

Survival Skills 48
Instructional Strategies 50

Providing native language instruction 50
Integrating language and content 50
Helping LEP students adjust to the classroom 50
Using multiple instructional strategies 51
Checking student comprehension of content 51
Adjusting teaching styles 51

7 Professional Development Guidelines **54**

8 Coordination and Communication **60**

9 Program Evaluation **63**

Appendices

Appendix A - OCR Policy Memoranda
Appendix B - Self Assessment for Meeting Lau Requirements
Appendix C - Bibliography
Appendix D - Summary of the 1991 OCR Policy Update on Schools' Obligations Toward LEP Students
Appendix E - Senate Bill No. 462, English Language Proficiency Act (ELPA)
Appendix F - ELPA Categories and Implementation Philosophy

Table of Exhibits

1 Overview of Federal and Colorado Requirements Supporting LEP Student Success 10

2 CDE Accreditation Schematic 19

3 Dual Iceberg Theory of Language 28

4 Examples of Instructional Responses to LEP Students By Language Acquisition Stage 29

5 LEP Student Language Proficiency/Performance Matrix 30

6 Guidelines for Gradual Exit From Alternative Language Programs to Mainstream English Instruction 46

7 Staff Development Functions 55

8 Guidelines for Managing Your Professional Development 57

9 Effective Professional Development (PD) Report Card 58

10 Evaluation Decision Cycle 65

11 Elements of a Good Evaluation Report 66

1

Introduction

The continuing challenge that educators, school administrators, and school board members face is how to provide *all* students with an excellent and equitable education. For the more than 30,000 students in Colorado who are limited in English proficiency (LEP) as reported to date by CDE, the challenge is intensified as students strive to reach the high academic standards adopted by local boards of education and the Colorado State Board of Education while mastering content in a language that is still in the process of being learned.

This handbook is designed to help school systems address the linguistic and educational needs of LEP students by focusing on ways to facilitate learning that capitalize on their diverse ethnic, cultural, social, and educational backgrounds and experiences. Further, it aims to provide superintendents, district and school administrators, school board members, and educators with resources for understanding federal and state requirements to assist them to:

- design and establish local policies and practices;
- design and implement instructional programs;
- support the professional development of teachers and other school staff;
- maintain sound coordination and communication practices; and
- evaluate their own efforts to educate students who are limited in English proficiency.

Considerable resource materials exist to help in planning for LEP student success; however, they are not always easily accessible nor readily available through a single source. The overarching purpose of this handbook is to offer "one-stop-shopping" with guidelines, suggestions for effective instructional practices, and resources for planning that are presented in a user-friendly format. This handbook was conceived as a self-contained reference for busy professionals who are charged with determining, implementing, and/or evaluating policies and practices to meet the needs of LEP students.

The remainder of this chapter contains key definitions of terms and acronyms that will be featured throughout the document. Further, it offers a brief historical perspective on the issues that led to the development of the handbook. *Chapter 2, Legal Frameworks*, addresses legal and judicial mandates that impact the education of LEP students. *Chapter 3, School and District Accountability/Accreditation Requirements* discusses mandates that have a direct bearing on assuring equity and educational opportunity for LEP students.

Chapter 4, Language Acquisition and Second Language Development, lays the foundation for instructional strategies and best practices with regard to LEP students' linguistic needs. *Chapter 5, Processes for LEP Student Identification, Assessment, Service Delivery, Placement Review, and Reclassification/Exit*, provides a procedural context that emphasizes continual review and determination of best programs, materials, and placements for LEP students to help ensure their opportunity to learn and succeed in school.

Chapter 6, Effective Instructional Practices for LEP Students, discusses strategies and methods including survival skills and ideas for content-area teachers as well as bilingual/ESL teachers to modify instructional techniques. In *Chapter 7, Professional Development Guidelines*, staff development for preservice and inservice teachers, other instructional and support staff, and parents and community members is addressed along with information on teacher accreditation.

Chapter 8, Coordination and Communication, offers ideas on coordination with other federal programs, Colorado initiatives, and local resources. In *Chapter 9, Program Evaluation*, formative and summative evaluation procedures are featured that include a planning cycle of needs assessment, goal and objective setting, program implementation, program evaluation, and the use of evaluation results to improve the educational services.

In the final section of the handbook, the *Appendix*, references and resources for planning for LEP student success are included along with regulatory and nonregulatory guidance, and a bibliography.

While every effort was made to identify and cite each and every source that is contained in the handbook, there may be some which were inadvertently omitted. This handbook was designed as a loose leaf binder emphasizing that it is a "work in progress." It is in that spirit that we welcome your suggestions and additions. If you have comments on the handbook, citations to update, or if you would like further information, please contact:

Dr. Susan P. Schafer, Director
School Effectiveness Unit
Colorado Department of Education
201 East Colfax Avenue
Denver, Colorado 80203
(303) 866-6749

Background Information and Historical Perspective

Under Civil Rights law and policy, school districts must provide LEP students with alternative language services that are recognized as sound or considered legitimate experimental strategy by experts in the field of educating LEP students. Based on student needs, LEP students generate considerable funds for school districts in Colorado such as ELPA, Emergency Immigrant Education, and Migrant Education. These funds must be used to create effective instructional programs and to meet Colorado's LEP students' needs. The goals of such services are:

- to help LEP students achieve competency in the English language;
- to enable LEP students to achieve grade level status to the extent they are individually able; and
- to enable LEP students to meet graduation standards/requirements in all courses of the curriculum.

The handbook was developed in response to an agreement between the Colorado Department of Education (CDE) and the Association of Directors of Bilingual Education (ADOBE). In January of 1995, a complaint was filed by ADOBE that alleged that CDE had discriminated against LEP students in Colorado by not providing a State plan or rules to actively ensure compliance for LEP students. The complaint went on to allege that CDE had not been actively seeking and budgeting for necessary funding for local districts for LEP student education; providing effective evaluation and monitoring of ELPA; requiring adequate teacher qualifications and endorsements for educating LEP students; nor providing adequate technical assistance for local school districts regarding programs and effective communication with language minority parents.

The initial negotiations resulted in an impasse, but both parties returned to the table and an Early Complaint Resolution agreement was signed the following February, 1996. The remedies of the agreement included the modification of teacher certification for teachers working with LEP students and the development of a handbook on planning for LEP student success.

The handbook was to include regulatory and nonregulatory guidance that educators and school boards could use to help ensure LEP student access to equal educational opportunities. Further, it was to focus on resources for educators and school boards to assist them in their efforts to design, deliver, and evaluate alternative instructional programs for LEP students. With the shift to working collaboratively rather than adversarily, the task became more centered on addressing the need for acquiring resources that would be useful in planning for LEP student success. This handbook was developed by the Colorado Department of Education with input from the ADOBE work group and other contributors. Although the handbook was reviewed by the Office for Civil Rights, it is not to be considered an official OCR policy interpretation.

Planning for Limited English Proficient (LEP) Student Success is a document that provides current and appropriate educational materials, processes, and practices. To help ensure a common understanding of the information that follows, the next section offers an interpretation of key terminology that will be used throughout the handbook.

Key Terminology Related to Planning for LEP Student Success

BICS - Basic Interpersonal Communication Skills (BICS) is the language ability required for face-to-face communication where linguistic interactions are embedded in a situational context (Cummins, 1984).

Bilingualism - Defining bilingualism is problematic since individuals with varying bilingual characteristics may be classified as bilingual. One approach is to recognize various categories of bilingualism such as bilingual ability through the determination of bilingual proficiency that includes consideration of the four language dimensions: listening, speaking, reading, and writing (Baker, 1993).

Bilingual Education - Although it is generally understood to be an instructional program for students that makes use of the their native language(s), bilingual education in practice takes on many different forms. An important distinction is made between those programs that use and promote two languages and those in which bilingual children are served, but bilingualism is not fostered in the curriculum (Baker, 1993).

Additive Bilingualism - Occurs in an environment in which the addition of a second language and culture does not replace the first language and culture; rather, the first language/culture are promoted and developed (Lambert, 1982).

Dual Language Program or Two-Way Bilingual Program - These bilingual programs allow students to develop language proficiency in two languages by receiving instruction in English and another language in a classroom that is usually comprised of half native English speakers and half native speakers of the other language (Christian, 1994).

TBE - Transitional Bilingual Education, also known as early-exit bilingual education is an instructional program in which subjects are taught in two languages--English and the native language. ESL is also taught. The primary purpose of TBE is to facilitate the LEP student's transition to an all-English instructional environment while receiving academic subject instruction in the native language to the extent necessary (U.S. General Accounting Office, 1994).

CALP - Cognitive Academic Language Proficiency is the language ability required for academic achievement in a context-reduced environment such as classroom lectures and textbook reading assignments (Cummins, 1984).

CDE - Colorado Department of Education

Dominant Language - The language with which the speaker has greater proficiency and/or uses more often (Baker, 1993).

ELPA - The English Language Proficiency Act is Colorado state legislation to provide for the establishment and support of English language proficiency programs in the public schools and to provide for the distribution of funds to school districts to help defray the costs of such programs (for further information, see Appendices E and F).

ESL/ESOL - English as a second language/English for speakers of other languages is an educational approach in which LEP students are instructed in the use of the English language. Instruction is based on special curricula that typically involve little or no use of the native language and is usually taught during specific school periods. For the rest of the school day, students may be placed in mainstream classrooms, an immersion program, or a bilingual program (U.S. General Accounting Office, 1994).

HB 93-1313 - Colorado's "standards" legislation, HB 93-1313 ensures students' fundamental rights to a free public education and the opportunity to achieve content standards at a performance level that is sufficient to allow them to become effective citizens, productive members of the labor force, and successful lifelong learners.

HB 96-1139 - Colorado's Basic Literacy Act ensures that upon completion of the third grade, no pupil may be placed at a grade level or other level of school that requires literacy skills not yet acquired by the pupil. Districts will have reading assessments in place in grades K-3 that are approved by CDE to determine literacy levels. Individual Literacy Plans will be written and executed jointly by teachers, parents, and school administrators. The Colorado State Board of Education is charged with creating regulations to permit exceptions to the retention of pupils in third grade.

IASA - The Improving America's Schools Act of 1994 is key legislation that reauthorizes the Elementary and Secondary Education Act (ESEA) of 1965 and includes significant mandates such as: Title I-Helping Disadvantaged Children Meet High Standards, Title II-Eisenhower Professional Development Program, Title V-Promoting Equity, Title VII-Bilingual Education, Language Enhancement, and Language Acquisition Programs, and Title IX-Indian Education (United States Department of Education, 1994).

Immersion - A general term for teaching approaches for limited English proficient students that do not involve using a student's native language (U.S. General Accounting Office, 1994).

L1 - The first language that a person acquires, L1 also is referred to as the native language (George Washington University, 1996).

L2 - The second language that a person acquires, L2 is learned sometime after the acquisition of the first language has been learned (George Washington University, 1996).

Lau vs. Nichols - A suit filed by Chinese parents in San Francisco in 1974 that led to a Supreme Court ruling that identical education does not constitute equal education under the Civil Rights Act. School districts must take "affirmative steps" to overcome educational barriers faced by non-English speakers (Lyons, 1992).

Lau Categories A-E - Lau categories are still used by some schools and districts to identify students for instructional services and funding. Policy guidelines known as Lau Remedies (that were ultimately withdrawn by the U.S. Department of Education) offer direction to assist school districts on the education of LEP students based on the ruling in the Lau vs. Nichols suit (Lyons, 1992). The categories are:

Lau A - The student comprehends or speaks a language other than English and does not speak English.
Lau B - The student comprehends or speaks some English, but whose predominant comprehension and speech is in a language other than English.
Lau C - The student comprehends or speaks English and one or more other languages and whose dominant language is difficult to determine. Lau C students may also be bilingual with equal skills in both languages.
Lau D - The student comprehends or speaks mostly English and another language.
Lau E - The student speaks and understands only English.

LEA - A local education agency (LEA) is also referred to as a school district.

LEP - Limited English Proficient is the term used by the federal government, most states, and local school districts to identify those students who have insufficient English to succeed in English-only classrooms (Lessow-Hurley, 1991). LEP refers to students who are limited in their ability to speak, read, comprehend, or write English proficiently as determined by objective assessments (Office for Civil Rights Draft District Guide, 1996).

Native Language - The first language learned in the home, or the home language, often continues to be the students' stronger language in terms of competence and function (Baker, 1993).

NEP - Non-English proficient

OBEMLA - The Office of Bilingual Education and Minority Language Affairs (OBEMLA) of the U.S. Department of Education was established in 1974 by Congress to help school districts meet their responsibility to provide equal educational opportunity for LEP students.

OCR - The Office for Civil Rights of the U.S. Department of Education is a federal agency charged with the enforcement of anti-discrimination statutes and regulations prohibiting discrimination in education on the basis of race, color, national origin, disability, sex, or age. In addition to Title VI, the OCR is responsible for ensuring access to students with disabilities according to Section 504 of the Rehabilitation Act of 1973 §CFR, Part 104 and the Americans with Disabilities Act of 1990 §28CFR, Part 34.

PHLOTE - Primary or Home Language Other Than English includes any student with a language background other than English (Office for Civil Rights Draft District Guide, 1996). A PHLOTE child may be bilingual, limited-English proficient, or monolingual in the home language or in English (Lessow-Hurley, 1991). In Colorado, PHLOTE students are identified using a parent checklist (*see Chapter 5 of this Handbook for further information).*

Pull-Out English as a Second Language Program - A type of program in which LEP students are pulled out of mainstream classrooms for special instruction in English (Snow, 1986).

SEA - State education agency

Sheltered English - Sheltered English is an instructional approach used to make academic instruction in English understandable to limited English proficient students. Teachers use physical activities, visual aids, and the environment to teach vocabulary for concept development in content areas (National Clearinghouse for Bilingual Education, 1987).

Structured Immersion - In this program, LEP students receive all of their subject matter instruction in L2 from a teacher who understands the native language of the students. The teacher uses a simplified form of L2 and the students may use their native language in class; however, the teacher generally uses only the second language (Snow, 1986). Furthermore, the curriculum is structured so that prior knowledge of English is not assumed as subjects are taught. Content is introduced in a way that can be understood by the students.

Submersion - LEP students are placed into an ordinary classroom where English is spoken, and there is no special program to help them overcome language problems. The native language is not used at all in the classroom. Submersion is not a legally acceptable approach.

Title I - Title I of the Improving America's Schools Act of 1994 supports programs to assist economically disadvantaged and students at risk of not meeting educational standards. Unlike its predecessor Chapter 1, the reauthorized Title I makes it clear that LEP students are eligible for services on the same basis as other students (Holmes, 1995).

Title VI-CRA - Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance (Lyons, 1992).

Title VII - The Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1968, established federal policy for bilingual education students (Crawford, 1995).

Having a common understanding of these key terms is helpful in planning for LEP student success. Because there are a number of accepted definitions for each term, the references have been cited after each term as a means of determining the source of the interpretation. Many of the terms are applied in the next section, *Legal Frameworks*, as a means of clarifying the discussion on districts' roles and responsibilities for providing equal educational opportunities for students who are LEP.

2

Legal Frameworks and Guidelines for Gifted/Talented and Special Education

Federal Requirements

Federal law including Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974, and Colorado statutory requirements provide the foundation for the requirements and guidance on planning for services to LEP students found in this chapter. Three specific areas serve as a framework on which the complex issues of LEP student identification, assessment, program placement and services, and program evaluation are carried out. These are:

- mandatory requirements pertinent to federal and state law;
- procedural requirements for all LEP students (including those who have been identified for, or placed in, special education), and
- nonregulatory guidelines.

Policy from the U.S. Department of Education, Office for Civil Rights (OCR) that is derived from legal interpretation of the Civil Rights Act of 1964 and its implementing regulations requires a district to identify all of its LEP students and provide them with equal and meaningful access to the educational programs offered by the district.

Granted a waiver under the Improving America's Schools Act (IASA), the State of Colorado has opted to become what is referred to by the U.S. Department of Education as an "ED-FLEX" state. ED FLEX status allows the state and its local education agencies to extend maximum flexibility in their compliance with federal education regulations. However, it must be noted that neither districts nor the SEA may waive requirements that have to do with Civil Rights legislation under Title VI of the Civil Rights Act. While the State Education Agency, local schools, and districts now have tremendous flexibility under ED FLEX to carry out their programmatic and fiscal responsibilities, the waiver does not apply to the equal education guidelines for LEP student identification, assessment, program placement, service provision, and program evaluation.

The mandatory federal requirement under Title VI of the Civil Rights Act of 1964 (34CFR.§100.3, 1964) states that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Further guidance was offered by the Department of Health, Education, and Welfare in its May 25, 1970 Memorandum in order to clarify the requirements specified in Title VI by stating that:

> Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the education program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. *(U.S. Department of Education, Office for Civil Rights, 1970)*

This important memorandum paved the way for the landmark case affecting LEP students that was decided by the U.S. Supreme Court in 1974, *Lau versus Nichols*. The ruling was that:

> There is no equality of treatment merely by providing [limited English proficient] students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. *(Lau v. Nichols.* 414 U.S. 563. 1974)

Under Title VI of the Civil Rights Act of 1964 and *Lau v. Nichols*, programs and activities that receive funds from the U.S. Department of Education must operate in a nondiscriminatory manner regarding, but not limited to, admission, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, vocational education, recreation, physical education, athletics, housing, and employment.

The Office for Civil Rights is responsible for enforcing compliance with Title VI as it applies to programs funded by the U.S. Department of Education. OCR's principal enforcement activity under Title VI is the investigation and resolution of complaints filed by individuals alleging discrimination on the basis of race, color, or national origin. The failure of school districts to provide equal educational opportunity for LEP students is investigated by OCR staff who work with school and district officials to resolve compliance issues. This is accomplished through guidance on program and services planning, resource support, technical assistance, and if necessary, the enforcement activity through administering proceedings or a referral to the U.S. Department of Justice for litigation.

State Requirements

The Colorado English Language Proficiency Act (ELPA) adds strength to federal requirements. Under ELPA, districts must use parent and teacher checklists to identify potential LEP students. Further, signed and dated checklists must be on file for all students whose primary or home language is other than English. Students are categorized for funding purposes and must be referred to the proper personnel for further observation and assessment. It is important to note that the district in which a student identified as eligible for ELPA funding is in attendance is responsible for providing alternative language services regardless of the student's ELPA categorical designation.

While the ELPA Act does not prescribe any one specific alternative language program, programs such as bilingual education and ESL/ESOL are frequently established by districts as the alternative instructional program for their LEP students. Under the ELPA Act, funding based on the number of LEP students is available for a maximum of two years. Even after the two years of funding have elapsed, districts must continue to provide alternative language services to all LEP students until their exit level proficiency criteria have been achieved.

The exit criteria must be established by each district according to the results of students' English language development and comprehension sections of nationally standardized assessment instruments reported to CDE annually in the fall. For students in kindergarten and grade one or for students whose English proficiency is so limited as to render the assessment results invalid, districts may utilize behavior checklists, valid non-test assessments, and/or other objective measures of educational progress.

Additional state legislation supports the ELPA Act and federal law which guide Colorado educators and communities in their planning for LEP student success. Examples of legislation that promotes high quality education for LEP students in Colorado includes House Bill 93-1313 that establishes state and local standards to demonstrate what students know and are able to do; House Bill 96-1139, the Colorado Basic Literacy Act; and the Colorado Constitution Article IX, Section 1 that addresses the accreditation of educators. Each of these vital sources is summarized in Exhibit 1. A comparison is made across the federal and state requirements that promotes LEP student learning. This exhibit examines the issues of identification and assessment, staffing, materials, segregation, program evaluation, and exit criteria.

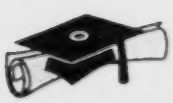


Exhibit 1
Overview of Federal and Colorado Requirements Supporting LEP Student Success

FEDERAL (Title VI, Lau v. Nichols, OCR Policy Update)	**STATE (SB 462, English Language Proficiency Act-ELPA)**	**STATE (HB 93-1313 State & Local Standards)**	**STATE (HB 96-1139, Colorado Basic Literacy Act)**	**STATE (Rules for the Accreditation of Schools)**
Identification and Assessment				
All students whose primary or home language is other than English are identified. English proficiency instruments in listening, speaking, reading, and writing as appropriate to their grade level, must be given to all PHLOTE students to identify LEP students.	All students are identified with teacher/parent language use checklists prescribed by CDE or locally developed with prior CDE approval. English proficiency assessments must be administered for LEAs to qualify for ELPA funding. Students are funded for first 2 yrs in the district.	Students are identified through ELPA and federally required processes. Assessment to determine the accomplishment of meeting and exceeding academic standards may be in an alternative form.	All LEP students will be included in reading and comprehension testing and can be assessed in L1. The reading progress of LEP students with Individual Literacy Plans (ILP) will be assessed each semester. The ILP shall continue until the LEP student is English proficient and reading at or above grade level.	LEP students' assessed English proficiencies and academic achievement levels will be included in each school's descriptive characteristics of the school improvement plan. LEP students' achievement discrepancies will be reported in the school improvement plan.
Requirements				
Alternative English acquisition services are required for all identified LEP students. LEAs must provide parents of LEP students with notices containing the same information provided to other parents. Notices must be in a language appropriate to the parents.	Alternative language programs are required for as long as the student is identified as LEP. LEAs must serve all LEP students regardless of ELPA status.	Implementation plans must eliminate barriers to equity and address the education of exceptional students and students of various backgrounds. All LEP students are expected to meet and/or exceed standards.	LEAs shall annually report, the number of LEP and other students who have an ILP. Parents and teachers together with school administration shall formulate an ILP.	Schools shall inform and encourage parents to be involved in the planning and evaluation of school programs.
Staffing				
Licensed teachers must be qualified to deliver the selected alternative language program model (e.g., ESL and/or bilingual endorsements).	ELPA has no specific staff requirements.	All staff is responsible for LEP students' learning and achievement. All staff is expected to work with ESL and/or bilingual staff.	Staffing options to help ILP students meet and/or exceed grade level reading levels are: 1) providing sufficient in-school instructional time; 2) assisting parents to implement a home reading program; and 3) providing a summer tutorial program.	All professional educators shall have qualification documentation for their professional assignments on file with the LEA or a plan describing the method and timeline for acquiring the endorsement. School accountability is the responsibility of the bldg principal. There is also a district accountability requirement.
Materials				
Appropriate materials in quality and quantity are required to meet LEP students' academic and content needs.	ELPA does not directly address materials.	All students' needs are to be met.	Literacy instruction includes appropriate literacy materials.	Schools must have provisions for library media and resources.

BEST COPY AVAILABLE

FEDERAL (Title VI, Lau v. Nichols, OCR Policy Update)	STATE (SB 462, English Language Proficiency Act-ELPA)	STATE (HB 93-1313 State & Local Standards)	STATE (HB 96-1139, Colorado Basic Literacy Act)	STATE (Rules for the Accreditation of Schools)
Segregation				
LEP students are to be assigned to the least segregative environment. Limited separation is allowable only when educationally justifiable (i.e., the benefits of the program outweigh the detrimental effects). LEP students shall be educated in comparable facilities. LEP students are to be assigned to special education and gifted/talented programs appropriately and not solely based on English language proficiency.	ELPA is a funding vehicle and does not address this issue.	All LEP students must have equal access to the district curriculum.	The Basic Literacy Act does not address this issue.	Ensures equal access to educational opportunities for every student. Opportunities should be available for student and parent choice.
Exit Criteria				
Districts must have established exit criteria from language programs for LEP students to participate fully in the district's regular academic program. LEP students should be monitored for language and academic growth. The district must address both English acquisition and any academic deficiencies developed when the students were concentrating on learning English.	ELPA requires a CDE audit for eligibility (identification and assessment) of LEP students. ELPA exit criteria is based on publisher guidelines of the identified 50th percentile on a nationally standardized test or the highest level of an English language proficiency test.	All classroom efforts are to provide the educational environment necessary for LEP and all other students to meet or exceed district and/or state content area standards.	Third grade ILP students will exit from the necessity of additional reading instruction when they meet or exceed Colorado's third grade level reading assessment.	Individual school accountability will rest, in part, on a school's ability to plan and execute ILPs for LEP and other qualified students to assist them to meet grade level literacy requirements and increase LEP reading and comprehension levels by 2 or more grades during one year of instruction. All schools must report all LEP students who have an ILP, increased reading comprehension levels by 2 or more grades during 1 year of instruction, or are enrolled in grade 3 reading and at or above grade level. All schools must report LEP student (and all students') decline in consistent patterns of academic achievement performance.
Program Evaluation				
Districts must conduct periodic ESL and bilingual program evaluations and make necessary program modifications to ensure LEP student success. The district cannot continue indefinitely with ineffective programs.	The report should include English language proficiency test results and achievement test results of students certified by the districts, identification and assessment techniques and problems, and recommendations for improving the effectiveness of the program.	Each district shall use the results of the state and district assessments to revise its programs of instruction and assessments to assist students needing additional academic support.	Each district shall annually report the number and percentage of 3rd grade pupils who read at or above the 3rd grade level and the number and percentage of K-3 pupils who have an ILP.	The plan and evaluation will contain goals, strategies, and growth indicators for LEP students' language and academic objectives.

Source: Dr. P.A. Jaynes, Jefferson County School District RE-1, Golden, CO.

BEST COPY AVAILABLE

Gifted and Talented/Special Education Issues

The U.S. Department of Education, Office for Civil Rights, is charged with the enforcement of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations which prohibit discrimination on the basis of disability. A publication by the U.S. Department of Education, Office for Civil Rights titled *Draft Consolidated Guide to the Provision of Equal Educational Opportunities for LEP Students* (1996) and a draft publication by the Colorado Department of Education, titled *Special Education and Students with Limited English Proficiency: Opportunities and Challenges* (1996) make it clear that school districts must adopt appropriate standards for deciding which students are limited in English proficiency and for providing LEP students with appropriate English acquisition services.

Excerpts from OCR's policy memoranda on districts' obligations to ensure equal educational opportunities to LEP students are useful for informing districts and schools about identifying and serving these students under federal law. According to these policy memoranda, school systems may not assign LEP students to special education on the basis of criteria that measure English language skills, and cannot refuse to provide alternative language services and special education to students who need both. This information is found in Appendix A. Another document, included in Appendix B, contains a self assessment checklist for districts and schools to consider regarding LEP students and Lau compliance.

There is clear legal guidance in identifying and making programmatic decisions about LEP students who fall into one of two categories:

- gifted and talented; or
- eligible for special education.

Guidelines for Gifted and Talented

In the identification of LEP students for gifted and talented services, students must meet the criteria determined by the district or school. Gifted and talented students are generally defined as those who are significantly discrepant from the norm in learning and/or performance capability compared to their age peers.

Students who are gifted and talented show up in all types and categories of young people, regardless of sex, race, ethnic or cultural group, language, socio-economic status, or type of physical, emotional, or learning disabilities.

In general, identification of students for gifted/talented program or programming purposes involves both a recognition of the way or ways and the degree to which individual students are discrepant from the norm (generally two or more standard measures or deviations above the mean), and a determination of the educational need related to the area(s) of significant ability.

Students may possess extraordinary learning or performance abilities that have nothing to do with their English proficiency. Procedures used for identifying students who are gifted/talented should be as bias-free and culturally-fair as possible. These procedures must be designed to point out or elicit student strengths and abilities, regardless of language, or dominant language use.

Generally, assessments used in identification should be administered in the language that gives the individual student the greatest advantage for demonstrating extraordinary capability. Assessments of a student's linguistic ability should be done in the student's dominant and most comfortable language.

Gifted and talented students who are also LEP should receive programming services designed to develop their specific area(s) of strength or ability, conducted in the language that would give the student the greatest advantage for optimal learning and performance. This does not preclude continuing English language instruction and developing proficiency in English use; however, developing English proficiency should complement and supplement, not substitute for, development of the student's significant strengths and abilities.

The time spent in the development of English proficiency should not take precedence over appropriate instruction and learning in the student's areas of strength and talent. For example, a mathematically gifted, non-English proficient student should receive advanced and accelerated mathematics instruction and opportunities to perform at optimal levels. The language of instruction should serve the optimal development of the student's mathematics ability. The student should spend as much quality time in high-level mathematics learning and production as would a highly English proficient, mathematically gifted student.

In summary, for determining strength-based programming needs and for measuring students' knowledge and skill development as a result of appropriate instruction, instruction and assessment procedures for gifted and talented LEP students should:

- utilize bias-free, culture-fair tests specific to ability areas with qualifying criteria being examined to ensure LEP students are not systematically screened out;
- accommodate the LEP students' language that is most comfortable and efficient for learning;
- include or be cast in a cultural context that emphasizes diversity;
- utilize the observation of students in learning and performance situations where English proficiency is not a requirement for optimal learning results or performance; and
- include performance judging criteria that are sensitive to the student's native language and/or cultural nuances including adopting alternate qualifying criteria such as testing in the native language non-verbal testing, and utilizing teacher/parent/student recommendations.

Instructional personnel who work with LEP gifted and talented students should have training in gifted and talented education and possess a high degree of content knowledge and skill in the student's area of learning strength or talent. These personnel should also be able to communicate effectively in the student's language which is most efficient and comfortable for learning, or they should be assisted by bilingual or multilingual translators to help assure student understanding.

The actual participation rates of LEP students in programs for the gifted and talented should be considered in determining whether an equal opportunity to participate has been

effectively addressed. Strategies should be identified for increasing LEP student participation in these programs. Some examples might be to increase staff and parent understanding of the participation criteria, encourage alternative language program staff and parents to refine the criteria using their knowledge about language acquisition and assessment issues and how they might affect LEP student success, and discuss equitable selection criteria with school and district decision makers.

Guidelines for Special Education

The major difference between gifted and talented student education and other kinds of special education is that gifted and talented education generally focuses on accommodation for--and development of--students' significant strengths and abilities. In other kinds of special education programs, the focus may also include remediation or compensation for student deficiencies, limitations, weaknesses, or disabilities.

When LEP students are being considered for special education, the following guidelines must be followed in order to ensure that LEP students receive the most appropriate educational services. The process described below helps to ensure equal educational opportunities. Procedures include a parent checklist, assessment of the LEP student's English language proficiency, and placement in an alternative language program which must be carried out for all LEP students (see Chapter 5). Informal consultation with general education assistance teams, special education referral, special education identification processes, and specialized instruction and support is an important step.

Procedures for Ensuring Equal Opportunities for LEP Students Being Considered for Special Education

Informal Consultation

If, during the course of the academic year, school personnel observe learning difficulties, then an informal consultation with other staff should take place. The classroom teacher(s) should consult with personnel knowledgeable in second language acquisition, the student's culture, and others familiar with the student.

Students' language, culture, and proficiency must be considered in reviewing their learning and behavior. Many second language learners do not have the same cultural and experiential backgrounds as their mainstream counterparts. Since the language, culture, and values acquired in the home environment have a direct impact on students' learning style and adaptation to school, it is important to include language and culture specialists in the consultation.

Where language proficiency information is untimely and incomplete, it may be appropriate to reassess the student's language proficiency to determine his/her current level of English language development (this is highly recommended for students in kindergarten and first grade). This reassessment will allow the classroom teacher and bilingual/ESL specialist to measure the student's rate of progress.

Language proficiency information is crucial in determining if the instructional program is appropriate for the student's language development stage and educational background. It is important to clarify that this is an assessment of the student's English language

proficiency and skills, and not an assessment of cognitive or academic abilities. English language proficiency needs are to be addressed through alternative language program services rather than through special education services.

General Education Student Assistance Team

School personnel should initiate a general education student assistance team to review the student's progress, interaction with peers, and learning style. Confidentiality of the proceedings must be explained to all members before the meeting is convened. The team should include the student's classroom teacher(s), bilingual/ESOL teacher (or a second language teacher or other staff member knowledgeable about second language acquisition), and someone familiar with the student's culture. The team may also include the special education teacher, school counselor, and other school personnel who have contact with the student. What distinguishes the pre-referral process from the actual special education referral process is that the general education student assistance team is under the authority and responsibility of the regular education system.

Teachers may not posses the knowledge, skills, and experience necessary to effectively meet the needs of students from diverse linguistic and cultural backgrounds. Therefore, the general education student assistance team must determine if the teacher's instructional techniques are known to be effective with LEP students of similar language and cultural background before making recommendations for intervention strategies. The student's classroom teacher(s) should become familiar with developmental processes of second language learners and the preferred learning styles generally associated with members of the student's culture. Input from providers comparing LEP students with his/her peers may be very significant.

Suggestions for effective teaching strategies and materials adaptation are included in Chapter 6 of this handbook. Generally, ways to adjust the method of presentation or content include: using sheltered English techniques; outlining the material for the student prior to reading a selection; using visuals, manipulatives, and realia; using nonverbal cues; breaking tasks into smaller subtasks; and substituting a similar, less complex task for a particular assignment. Supplemental materials might include: written summaries of lessons; activities and readings appropriate to students' language development stage; rewriting sections of reading passages to make the reading level more appropriate; reducing the number of pages or items on a page to be completed by students; and designing study guides to complement required materials.

Special Education Referral

After reviewing the student's academic history, language and culture, strengths and learning style, classroom interventions and results, and the intensity of the student difficulties, a referral to special education may be appropriate, if there is evidence that the difficulty is significant and may be related to a disability. Be sure that appropriate interventions and time adjustments have been made to determine that the difficulties are not related to English language proficiency.

Special Education Identification Process: Assessment and Determination of a Disability

The process for identification of LEP students for placement in special education or the determination of a disability in LEP students requires consideration of the student's language background in English and in the home language. Another issue related to

language is the caution that must be taken with regard to the assessment instruments, administration procedures, and interpretation. The section to follow provides guidance on the identification and assessment process.

Prior to Assessment - Before the formal assessment process is started, the parent or legal guardian must provide permission. Under federal and state law, information provided to the parents must be in the language normally used by the parent, unless clearly not feasible to do so. If the language does not have a written form, or the parents are not able to read their language, the district shall take steps to ensure that the information is translated orally and that the parent understands the content. There must be written documentation that these steps have taken place.

Native Language Assessment - State law requires the assurance that students are assessed in their native language and/or with non-verbal techniques using tests and evaluation materials that minimize cultural and racial bias. Students who cannot read, write, speak, or understand English as determined through appropriate testing may not be assigned to special education services on the basis of criteria developed solely upon the command of the English language.

Determining Language Proficiency - The completion of a parent checklist to determine if a language other than English is used at home is the first step in determining whether students have a primary or home language other than English. Once the presence of a language other than English has been established, a complete and thorough English language proficiency assessment in understanding, speaking, reading, and writing English should be completed prior to conducting any further assessment.

Testing Procedures - Tests and materials for the assessment of LEP students must be validated for the purposes intended. Test administrators (i.e., psychologists, speech and language pathologists, educational diagnosticians) must be qualified to administer the evaluation instruments in a language appropriate for the student. The assessments should be reliable and the norms appropriate for the student being tested.

Whenever possible, tests should be administered in the language or languages in which the student is proficient. Where tests are not available in the student's language, not normed for the student population, or not validated for the purposes for which the student is being tested, the results cannot be determinative of a disability or placement; rather, the results should be treated like other informal assessments.

To make testing more reliable, the use of an interpreter may be advised by the test publisher. However, caution should be taken to review the administration guide carefully to ensure that the use of an interpreter will not invalidate the test. Translating the test may raise content validity, but it may also violate the standardization. It is best to use the most appropriate instruments, collect a full background profile on the child, and use translators and interpreters, as appropriate, who are proficient in English and the language or languages of the student. See Chapter 5 of this handbook for additional guidance on appropriate assessment procedures.

Decision Making Through a Team Approach - A multi-disciplinary team including the parent or legal guardian and the student, if appropriate, must meet to determine whether the student has a disability and if the disability interferes with learning to the extent that the student cannot receive reasonable benefit from general education without specialized

services and supports. If the parent can not understand the information provided orally and in writing in English, a translator must be provided.

Individualized Education Plan - If the student qualifies for special education, then an individualized education plan (IEP) is developed. The IEP should be translated into a language understood by the parent. (A Spanish version of an IEP form is available from CDE). Where oral translation is provided, it should be documented. The plan must include goals, objectives, and a description of the type and duration of services to be offered. Placement in the least restrictive environment is based on each student's individual needs. It is important to remember when determining where services will be provided, that educational placement is not determined as a result of a category or configuration of the service delivery service system.

Districts' Legal Obligations - Even though the student is identified as eligible for special education and is receiving services, the district has a legal obligation to provide English language acquisition instruction, until such time as the student is identified as English language proficient on an objective language proficiency assessment. This needs to be taken into account in the development of the IEP.

Parent Permission for Placement - Once the team has agreed upon the individual education plan, the parent or legal guardian needs to sign a permission slip for placement in special education. The agreement to place the student should be in the language normally used by the parent unless clearly not feasible to do so. If not in a written language, the district shall take steps to ensure that the information is translated orally, that the parent understands the content, and that there is written documentation that these steps have taken place.

Specialized Instruction and Support

The student receives the specialized instruction and support identified on the IEP. The same procedures for annual and transl. reviews are followed for LEP students with disabilities as for all other students with disabilities. Continued language accommodations for parent notifications, meetings, and student assessments need to be followed.

The basic principles underlying the pre-referral and referral process are as follows:

- students whose language is other than English have the same rights as all other students;
- in order to make sure that these rights are protected, the students and parents must be provided information in a language they understand;
- students must be provided with the appropriate instruction and interventions based on their language needs before referral to special education; and
- when assessing a student for special education, testing instruments and procedures, materials, and instruction must reflect the language needs of the student.

School and district accountability requirements support the legal frameworks that are discussed in this chapter. Chapter 3 will look at the state accreditation process and the ways in which it can be helpful in planning for LEP student success.

3

School and School District Accountability/Accreditation Requirements

The State of Colorado has an accreditation program designed to promote high standards of academic performance for *all* students and ensure equal access to educational opportunities for every student in the state. The term "all students" is defined by the Colorado Department of Education (1996) as:

> *Every student regardless of gender; socioeconomic level; disadvantaged status; racial, ethnic, or cultural background; exceptional abilities or disabilities; or limited English proficiency.*

Initiating the process of providing the most appropriate education for LEP students involves student identification and analysis of student performance through disaggregation and examination of student achievement data. This procedure provides district and school staff with the data needed to determine LEP students' achievement discrepancies, identify trends in learning and achievement, and suggest possible reasons for these performance results.

It is required that each year the information on LEP student identification and assessment be contained in a written Annual Progress Report to the community. This report includes, among other things, current student performance results, specifically:

- performance levels of all students related to local academic standards; and
- an analysis of student performance in order to assure equity and ensure commensurate academic growth of all students.

These regulations have a special importance for LEP students and are based on sound legal foundations. The Colorado Department of Education requires that schools and school districts be accredited based on student performance results, school improvement planning, and reporting to their local community. In addition, school districts are accredited for their management practices as they relate to accreditation and accountability.

Because it is accountability-based, the Colorado school and school district accreditation process supports the provision of equitable services to every student regardless of

gender; socio-economic level; disadvantaged status; racial, ethnic, or cultural background; exceptional abilities or disabilities; or limited English proficiency.

Further, examining and disaggregating student achievement data should be done through analysis and reflection, to determine achievement discrepancies and trends. Possible reasons for these results should be determined, and the school's education programs must be developed, modified, or substantiated to promote optimal learning for *all* students, including students who are limited in English proficiency.

The Colorado Department of Education has established Enterprise Accreditation Contracts with school districts that have implications for planning for LEP student success (*CDE: Colorado Consolidated State Plan, 1996*). Under section 3.02, district policies, practices, and procedures need to include data and appropriate documentation of student improvement and assurances that the district and its schools provide appropriate instruction and support services that show evidence of commensurate or equal educational growth for all students. This section also calls for the makeup of local Advisory Accountability Committees to be consistent with the ethnic/racial and gender makeup of the community they serve.

Exhibit 2 provides a visual representation of Colorado's accreditation for school districts and schools and shows the relationship between CDE and local control through Enterprise Accreditation Contracts. These contracts aim to assure equitable academic opportunities and high academic standards for *all* students.

Exhibit 2
CDE Accreditation Schematic

Enterprise Accreditation Contract is a contractual agreement between the State Board of Education and a local board of education. It is designed to extend responsibility for the accreditation of schools to the local school boards, assuring equitable academic opportunities and high academic standards for *all* students.

BEST COPY AVAILABLE

Having qualified staff to implement programs and procedures is critical to the process of ensuring educational equity. The following personnel hiring practices should be employed in order to help ensure educational equity for LEP students.

- Hire personnel with cultural and linguistic diversity at all levels and for all programs and departments.
- ESOL/bilingual educational programs should be staffed with individuals who are licensed, bilingual- or ESOL-endorsed professional teachers with excellent language and literacy skills in English and the target language(s) of the students.
- Paraprofessionals, and other support staff should have excellent bilingual language and literacy skills and/or excellent English language and literacy skills and should work with students only under the supervision of a certified, endorsed teacher.
- Other desirable attributes and experiences to look for in hiring staff are if they: were raised in a bilingual environment; have completed additional graduate level coursework in bilingual/ESOL education; were trained in second language methodology, assessment, and learner-centered instructional strategies; have taught in related educational settings; have the ability to work with large and small groups of students; possess the knowledge, skills, and dedication to infuse multicultural learning throughout the curriculum; have an ability to collaborate and work cooperatively with diverse groups; and have had experience living and/or working in another country and using a second language.

The section to follow provides a checklist for districts/schools with regard to LEP students and Lau compliance. By discussing the district and school policies and practices that are already in place and then considering each of the statements on the checklist, districts and schools can gauge the extent to which they are providing equal educational opportunities for LEP students. The checklist contains policy and practice statements for the identification of LEP students, language assessment, placement, teachers, professional growth, time, grouping, curriculum, and evaluation.

Checklist for Districts/Schools with Regard to LEP Students and Lau Compliance

<u>Identification of Limited English Proficient (LEP) Students</u>

- ☐ Procedures are in place for identifying students with a primary or home language other than English (PHLOTE).
- ☐ Reliable and appropriate language proficiency instruments that assess listening, speaking, reading comprehension, and writing are being used to identify and assess PHLOTE students' language proficiency in English and the home language.
- ☐ All possible steps are being taken to ensure that all potential PHLOTE and LEP students are properly identified.
- ☐ A sound process of parent/community and teacher input is used in identifying PHLOTE and LEP students.

- ☐ A process is in place for resolving any differences that occur between teacher, parent, and other staff recommendations about assessed proficiency levels.
- ☐ A committee is in place or an individual is designated as responsible for the review, verification, and approval of the identification of PHLOTE and LEP students.
- ☐ Data regarding the number of LEP students who have been identified and who are being served per language group and grade are maintained and easily accessible.
- ☐ Procedures are in place for the identification and service to parents who require translation services.

Language Assessment

- ☐ Procedures are in place for assessing the English language proficiency of each PHLOTE student.
- ☐ The degree of reliability and validity of language proficiency instruments that are being used in the district/school has been determined by a recognized expert and documented.
- ☐ Individuals who administer language assessment instruments in English and in the native language are qualified, have appropriate language skills, and have received training in administration procedures.
- ☐ The criteria for identifying Lau A, B, C, and non-proficient Lau D category students has been established and the breakdown of Lau A, B, C, and non-proficient Lau D students for the top five language groups has been compiled.

Placement

- ☐ The criteria for placing Lau A, B, C, and non-proficient Lau D students in appropriate educational programs have been established at the elementary, middle, and secondary levels.
- ☐ A procedure is in place to ensure that LEP students have access to gifted and talented programs and are not improperly placed in special education classes.
- ☐ All LEP students are receiving sufficient alternative language program instruction.
- ☐ Exit criteria have been determined and are being used for mainstreaming LEP students.
- ☐ Former LEP students are being monitored after exiting alternative language programs and student progress is being documented during the monitoring process and for an appropriate amount of time after exiting but for no less than two years.
- ☐ LEP students are provided with content area educational assistance after exiting the alternative language program.

Teachers

- ☐ The minimum qualifications necessary to be an instructor in a bilingual or ESOL classroom have been determined and data have been compiled on the number of instructors in the bilingual/ESOL program who are speakers of the students' primary or home language(s).
- ☐ Reliable and valid measures are in place to determine staff's English fluency and fluency in their other language(s).
- ☐ Data are compiled and easily accessible on the qualifications, the number of bilingual or ESOL instructors, and bilingual paraprofessionals who are employed by the district, and the number who are working in the classrooms.
- ☐ Criteria have been established for identifying and hiring qualified bilingual paraprofessionals.

Professional Growth

- ☐ An inservice plan on bilingual/ESOL instruction techniques and theory has been designed.
- ☐ Incentives for personnel to obtain ESOL endorsements or bilingual certificates is promoted, encouraged, and/or offered.
- ☐ Procedures have been identified for training and/or hiring certified and endorsed (or otherwise qualified) staff for the alternative language program.

Time

- ☐ The minutes of English instruction spent daily with each Lau A, B, C, and non-proficient Lau D category students and the time spent daily teaching content area concepts in an accessible and meaningful manner are well maintained and easily accessible.
- ☐ Procedures are in place to determine the appropriate amount of instructional time that each LEP student should receive for the development of first and second language skills.

Grouping

- ☐ Decisions about the bilingual/ESOL program design (i.e., in-class, pull-out, school-wide, etc.) have been made after discussions with multiple constituencies.
- ☐ Students are primarily grouped in the designated classrooms in terms of numbers with consideration to individual, small group, and large group configurations and both heterogeneously and homogeneously groupings occur appropriately.
- ☐ Classrooms utilize room arrangements that are conducive to interest centers and to facilitating learner-centered instruction.
- ☐ Classrooms represent the cultural diversity of the students with materials and displays reflecting both English and the native language.

Curriculum

- ☐ An instructional program is in place that is designed to supplement English language learning for LEP students.
- ☐ ESOL/English language services and the alternative language program instruction are systematically provided by qualified teachers trained in these methodologies.
- ☐ A procedure is in place for providing professional development for staff on using the bilingual/ESOL curriculum.
- ☐ Techniques and methodologies are utilized in designated bilingual/ESOL classrooms to enrich and remediate student achievement.
- ☐ Content area instruction has been modified to increase accessibility of the LEP student.

Evaluation

- ☐ A procedure is in place with specific criteria for the evaluation of administrators, teachers, and paraprofessionals.
- ☐ Evaluation results are used to improve instructional practices of personnel in the bilingual/ESOL program.
- ☐ A process is in place for the evaluation of student achievement that includes documentation on the number of LEP students who show progress or whose scores decline.
- ☐ Data are maintained and accessible on the number of LEP students, by language group, over the past three years who have been retained and who have dropped out of school compared with the district averages.
- ☐ Data are maintained and accessible on how the performance of former LEP students compares with their non-LEP peers, whether they have gained full access to the curriculum, and whether they meaningfully have participated in all aspects of the curriculum.

Schools and districts must respond appropriately to the items on the checklist by designing processes for the identification, language assessment, placement, staffing, professional growth, instructional time and grouping, curriculum, and evaluation of LEP students. With this piece firmly in place, schools and districts are in a position to assert that their school environment is appropriate for *all* students.

Acquiring a practical knowledge of language development and second language acquisition is important for school and district staff in order to assist them in responding appropriately to LEP student needs. The chapter to follow provides information about first language development, second language acquisition, and the characteristics of language acquisition classrooms.

4

Language Development and Second Language Acquisition

A distinction can be made between first language development and second language acquisition to set the foundation for learner-centered instructional strategies for LEP students. However, regardless of whether a first or second language is being learned, there are five principles that apply. These are:

- language is learned by using language;
- the focus in language learning is meaning and function (not form);
- language learning is non-anxious, personally important, and concretely-based;
- language is self-directed, not segmented or sequenced; and
- the conditions necessary for language are essentially the same for all children.

These principles support best practices to facilitate language learning. In the same way that children learn to read by reading and to write by writing, they learn language by using language. Though the rate of development is different for all children, the conditions necessary for learning language are essentially the same.

First Language Development

Key concepts and theories have been put forth by Brown (1973), Chomsky (1986), and Piaget (1970) on how language is developed through an internal process whereby humans innately create words and sentences. Language rules are generated as individuals move through developmental stages of language--each at their own rate. In Crain (1980), Chomsky posits that as we create, comprehend, and transform sentences, we intuitively work on two levels: the deep structure and the surface structure of language. The surface structure refers to the way words or sounds are put together while the deep structure refers to the meaning that the words or sounds are meant to communicate.

Most theorists agree that language is related to thinking and requires the development of concrete operations. As the first language is developed, children need to hear it spoken and, through good models, will master language without any special program of instruc-

tion. While some believe that teaching about language makes children more conscious of their language, it is widely accepted that since children independently master an intricate system of grammatical rules, that their independent and intuitive efforts should be respected and not undermined through attempts to teach abstract rules of grammar. In spite of the beliefs about how language is best developed, four essential interactions are key to the learning and development:

- exposure to language;
- imitation;
- practice in a nonthreatening environment; and
- reinforcement.

The next section discusses the acquisition of a second language. In working with LEP students to facilitate their learning, a number of prominent researchers (Clay, 1991; Cummins, 1981; Peregoy, 1991) support the belief that the first language offers the best entry into literacy by providing a cognitive and academic foundation for proficiency in the second language.

Acquiring a Second Language

Children can best acquire a second language in much the same way that they learn a first language. They acquire the language as they struggle to communicate and make sense of their world. This process is compounded, however, because second language learners need to use the new language to learn subject matter, interact socially, and achieve academically.

Krashen (1982) suggests that during the early stages of learning a second language, students need to hear messages they can understand, but they do not need to actually produce language right away. They need to experience what he calls a "silent period." Most ESOL teachers agree that LEP students seem to learn English more quickly when teachers use pictures, gestures, manipulatives, and other means to make English comprehensible, while at the same time reducing the stress of high expectations associated with student production of the new language.

The Acquisition-Learning Hypothesis posited by Krashen (1982) suggests that a new language is acquired subconsciously as it is used for various purposes. If a student needs to know how to order a pizza, s/he acquires the vocabulary needed to accomplish this task. By using language for *real* purposes, it is acquired naturally and purposefully. For older students, language can be acquired as they read and write, as well as through listening and speaking. People acquire language when they receive oral or written messages they understand. These messages provide comprehensible input that eventually leads to the output of speaking and writing.

Students acquire a second language through exploration of verbal expression that increases as confidence and knowledge are gained through trial and error. Krashen (1982) defined the following stages of language for second language learners but acknowledged that since language acquisition is an ongoing process, the stages may overlap and growth may occur at different rates.

- Silent/Receptive Stage - The student does not verbally respond to communication in L2 although there is receptive processing. The student should be actively included in all class activities but not forced to speak. Teachers should give students in this stage

of L2 acquisition sufficient time and clues to encourage participation. Students are likely to respond best through non-verbal interaction with peers; being included in general activities and games; and interacting with manipulatives, pictures, audiovisuals, and "hands-on" materials. As students progress through this stage, they will provide one word verbal responses.

Characteristics of students in the Silent Stage are that they:

- -- are verbally unresponsive advancing to one word responses;
- -- are hesitant, often confused and unsure;
- -- indicate comprehension nonverbally;
- -- develop listening skills; and
- -- associate sound and meaning.

- Early Production Stage - During this stage, LEP students begin to respond verbally using one or two words and develop the ability to extract meaning from utterances directed to them. They continue to develop listening skills and build up a large recognition vocabulary. As they progress through the stage, two or three words may be grouped together in short phrases to express an idea.

  Characteristics of students in the Early Production Stage are that they:

  - -- relate words to their environment;
  - -- demonstrate improved comprehension skills;
  - -- grasp main ideas without understanding all the parts;
  - -- focus on key words and contextual clues; and
  - -- use one word verbal responses advancing to groupings of two or three words.

- Speech Emergence Stage - In this stage, LEP students begin to respond in simple sentences if they are comfortable with the school situation and engaged in activities in which they receive large amounts of comprehensible input. All attempts to communicate (i.e., gestures, attentiveness, following directions) should be warmly received and encouraged. It is especially important that neither the instructor nor the students make fun of, or discourage, LEP students' attempts at speech.

  Characteristics of students in the Speech Emergence Stage are that they:

  - -- produce words that have been heard many times and understood, but may be mispronounced;
  - -- commit omission errors; and
  - -- produce what is heard such as common nouns, verbs, and adjectives.

- Intermediate Fluency Stage - In this stage, students gradually make the transition to more elaborate speech so that stock phrases with continued good comprehensible input generate sentences. The best strategies for students in this stage are to give more comprehensible input, develop and extend recognition vocabulary, and to give them a chance to produce language in comfortable situations.

Characteristics of students in the Intermediate Fluency Stage are that they:

- -- commit more errors as their utterances become more complex;
- -- have not yet mastered grammar because concentrating on grammatical elements is counterproductive at this stage of language development; and
- -- exhibit extensive vocabulary development.

- Advanced Fluency Stage - During this stage of development, students begin to engage in non-cued conversation and produce connected narrative. This is appropriate timing for some grammar instruction, focusing on idiomatic expressions and reading comprehension skills. Activities are desirable that are designed to develop higher levels of thinking, vocabulary skills, and cognitive skills, especially in reading and writing.

  Characteristics of students in the Advanced Fluency Stage are that they:

  - -- can interact extensively with native speakers;
  - -- commit fewer errors in grammar;
  - -- participate in transitional English reading programs;
  - -- continue to need extensive vocabulary development in English after having had opportunities to develop L1 literacy, although many of their reading skills transfer from one language to another; and
  - -- may still be functioning in a basic interpersonal language proficiency level and while exhibiting a level of comprehension that is high, may not be advanced enough for all academic classroom language.

  (Adapted from Project Talk Title VII Academic Excellence Program in Aurora, Colorado)

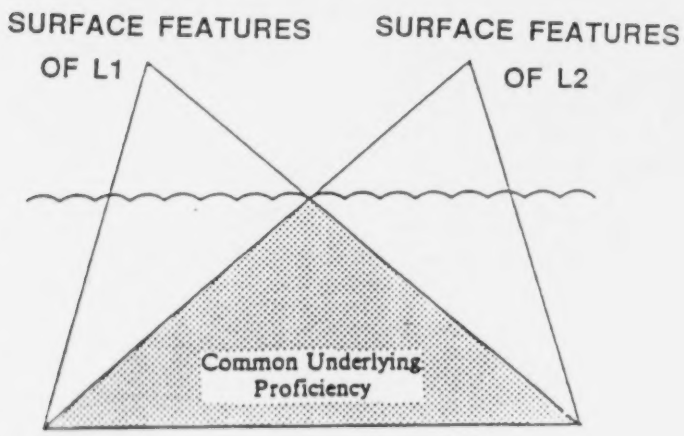
In the Language Use section to follow, specific behaviors and appropriate activities for each of Krashen's stages will be described.

Language Use

Cummins (1980) posits a framework related to language use in which he describes the difference between language that is used for basic social interaction and language that is used for academic purposes. Basic Interpersonal Communication Skills (BICS) refers to language skills needed for social conversation purposes, whereas Cognitive Academic Language Proficiency (CALP) refers to formal language skills used for academic learning. It generally takes LEP students up to five years to acquire sufficient BICS necessary to participate in spontaneous conversation (Cummins, 1979). CALP usually takes from seven to 10 years for LEP students to become cognitively proficient in the second language (Thomas and Collier, 1995).

Exhibit 3 provides a visual representation of what Cummins describes as the Dual Iceberg Theory in which an LEP student's two language systems are demonstrated. The iceberg is an appropriate metaphor because, as with language, the majority of the structure is below the surface. LEP students' BICS is represented by the portion that is above the surface and their CALP is represented by the portion that is below the surface.

Exhibit 3
Dual Iceberg Theory of Language



A thorough assessment of language proficiency that includes both BICS and CALP is crucial to understanding LEP students' language and how they might best respond to instructional initiatives. It is important to consider the principles and practices related to second language acquisition as described previously in this chapter. By juxtaposing language assessment information with the language acquisition stages, this information could be used to help teachers design lessons and make sound educational decisions that are supported by data. Appropriate instructional responses to each of the of the five stages of language acquisition are illustrated in Exhibit 4.

Exhibit 4
Examples of Instructional Responses to LEP Students
By Language Acquisition Stage

Silent/Receptive Stage I	Early Production Stage II	Speech Emergence Stage III	Intermediate/Advanced Fluency Stage IV and V
▸ Use visual aids and gestures ▸ Slow speech emphasizing key words ▸ Do not force oral production ▸ Write key words on the board with students copying them as they are presented ▸ Use pictures and manipulatives to help illustrate concepts ▸ Use multimedia language role models ▸ Use interactive dialog journals ▸ Encourage choral readings ▸ Use Total Physical Response (TPR) techniques	▸ Engage students in charades and linguistic guessing games ▸ Do role playing activities ▸ Present open-ended sentences ▸ Promote open dialogues ▸ Conduct student interviews with the guidelines written out ▸ Utilize charts, tables, graphs and other conceptual visuals ▸ Use newspaper ads and other mainstream materials to encourage language interaction* ▸ Encourage partner and trio readings	▸ Conduct group discussions ▸ Use skits for dramatic interaction ▸ Have students fill out forms and applications* ▸ Assign writing compositions* ▸ Have students write descriptions of visuals and props ▸ Utilize music, TV, and radio, with cloze activities ▸ Show filmstrips and videos with cooperative groups scripting the visuals ▸ Encourage solo readings with interactive comprehension checks*	▸ Sponsor student panel discussions on thematic topics* ▸ Have students identify a social issue and defend their position* ▸ Promote critical analysis and evaluation of pertinent issues ▸ Assign writing tasks that involve writing and rewriting, editing, and critiquing written examples* ▸ Encourage critical interpretation of stories, legends, and poetry* ▸ Have students design questions, directions, and activities for others to follow ▸ Encourage appropriate story telling

** It is important to structure ESL activities that are both age appropriate and linguistically appropriate.*

Exhibit 5 on the page that follows provides a visual representation that consolidates levels of language proficiency, (on a scale of one to four with one being low and four being highly proficient), descriptors of Krashen's second language acquisition stages (1982), and performance indicators for the four essential skills of comprehension, speaking, reading, and writing.

Exhibit 5
LEP Student Language Proficiency/Performance Matrix

	Proficiency Level			
	Level I	**Level II**	**Level III**	**Level IV**
Characteristics	Minimal comprehension; no verbal production	Limited comprehension; one or two word responses	Good comprehension; errors in pronunciation, simple sentences with limited descriptive vocabulary	Excellent comprehension, few grammar errors, near native speech
Appropriate Activity Behaviors	Listen, point, move, choose, match, circle mime, act out, draw, choose	Name, list, categorize, label, respond with one or two words, group, tell, say, answer	Describe, retell, define, explain, recall, summarize, role-play, compare and contrast	Give opinions, defend, debate, justify, write, read, evaluate, create, examine
Stages*	Silent/Receptive	Early Production	Speech Emergence	Intermediate/Advanced Fluency
Language Component				
Comprehension	Understand expressions and commands, follow basic instructions, understand the spoken word, discriminate different sounds, identify rhymes and rhythms	Identify basic structures, employ active listening to timing and alliteration, become aware of speaker's purpose, and respond by asking questions	Follow instructions, actively listen, identify variations in sounds/intonation, respond to speaker, identify main idea of the story and the speaker's message	Listen attentively, follow oral directions, respond to verbal and nonverbal clues, listen to and restate a set of directions
Speaking	Produce some original language, use expressions; act out plays requiring very little dialogue; tell personal stories	Communicate effectively one-on-one and in small groups, use a variety of words, retell stories and poems, use subject/verb agreement, use adverbs and adjectives, sequence events properly	Speak clearly with appropriate vocabulary and pronunciation, sequence events, use creative drama, engage in questions and answers, contribute to discussions, participate in panels and problem solving	Use standard pronunciation, express ideas/feelings, relate personal experiences, use words/phrases in context, present readings with appropriate expression, recognize the speaker's point of view, dramatize, analyze what is heard, tell jokes
Reading	Recognize letters, show phonics skills, distinguish vowel and consonent sounds, possess small sight vocabulary	Predict outcomes, recall facts and details, identify main idea and draw conclusions, understand the feelings of characters, follow simple written directions, use the dictionary to determine meanings	Use complex phonics and content for word identification, use the dictionary, summarize and sequence events, describe time and setting, understand themes and feelings, use graphic resources for information	Follow written directions, use word clues to decode text, read/respond to a variety of literature, locate info/resources, sequence story events, identify main ideas/details, dramatize characters/feelings, draw conclusions/predict outcomes, relate lit to personal experience, express opinions, interpret stories/poems/legends, evaluate material read, gather/org info
Writing	Respond to literature by drawing, demonstrate legible handwriting, demonstrate copying skills, perform basic spelling of simple words	Use a variety of prewriting activities, write in complete sentences, use punctuation/capitalization and systematic methods to spell	Apply punctuation/capitalization, write legibly, use systematic methods to spell complex words, write brief descriptions of personal experiences, recognize/write in complete sentences, write for a variety of purposes and audiences, write in proper sequence, collect information from various sources, narrow topic, do prewriting activities, give reasons to persuade	Write legible in manuscript and cursive, use conventions of writing, apply basic spelling, use correct forms and patterns, write for multiple purposes, elaborate ideas and details, do prewriting and first draft writing, write to inform and entertain, persuade, write original poetry

* Krashen, S.D. (1982). Principles and practice in second language acquisition. New York: Pergamon Press

BEST COPY AVAILABLE

Language Acquisition Classrooms

LEP students often experience limited success in all-English classroom situations. Many educators believe that this is the direct result of the conditions inherent in the model that has been used in the schools for generations whereby the teacher is the "source of all knowledge," and the students are passive recipients of that knowledge. LEP students, as well as many other students in the school system, frequently do not succeed in the traditional classrooms that are not effective in promoting language acquisition.

Language acquisition classrooms are nontraditional classrooms designed to promote the acquisition of language. They advocate an integrative and interactive model of teaching based on current research and promote continual language development for students who are progressing in their first language, as well as for those who are acquiring a second language. Teachers and students see themselves as partners in learning to use authentic communication in small, heterogeneous groups.

Language acquisition classrooms are student-centered, celebrating the value and potential of all students. The strengths and interests of each child are esteemed along with respect for all cultures and languages. Within a nonthreatening and noncompetitive environment, teachers take full responsibility for providing comprehensible input to all students regardless of their language. In this informal, rich, and literate environment, all students can succeed. The Arizona Department of Education (1992) compiled a list of characteristics of the language curriculum in language acquisition classrooms. These include:

- a simultaneous integration of listening, speaking, reading, and writing skills;
- giving students sufficient time to go through the language process;
- the use of natural language for real communication purposes;
- comprehension of meaning as the goal of all language activities;
- a variety of highly motivating activities using culturally relevant materials;
- language development and content as a dual curriculum;
- curriculum organized around a theme;
- students reading and being read to every day;
- students writing every day; and
- facilitating learning, not remediating.

Teachers in a language acquisition classroom are facilitators of language while modeling language, attitude, and ways to do things. They are aware of cultural differences, but do not stereotype. Informal relationships with students occur as teachers accept all students wherever they are and build on their strengths. It is important for teachers to adapt their own language and the language of the classroom to the ability level of each student to help ensure comprehension.

An important note about the classroom environment relates to the concept of equal access to school programs and to optimal physical environments that facilitate learning. Best practice supports that optimal learning occurs when the classroom climate and physical environment are comfortable in terms of temperature, space, furniture, and freedom from distractions; where materials are plentiful, accessible, and when there are appropriate choices; and when there is access to technology, curriculum, supplies, materials, and equipment to facilitate learning. In other words, the classrooms in which LEP students are placed must be comparable to those for all students and the resources

must be equitable. Clearly, to meet the test of equitability, LEP students should not be working with tutors in noisy hallways, cramped storage rooms, or ill-equipped classrooms. Furthermore, to meet high standards, LEP students should not be segregated from participating in activities in all-English classrooms, in honors classes or in programs for the gifted and talented, nor should they receive alternative language programs in facilities that are not conducive to optimal learning.

Chapter 5 will outline educational decision making processes such as student identification and assessment that will help inform decisions about the placement of LEP students in alternative language programs.

5

Educational Decision Making Processes for LEP Students

Educational decision making for LEP students requires procedures that emphasize continual review and determination of best placements, programs, and materials to help ensure their opportunity to learn. Collaborative planning to determine processes and timelines for identification and assessment, service delivery, placement, review, and reclassification and/or exit is essential for LEP students to meet high standards and succeed in school.

As previously described in Chapter 3 of this handbook, the State of Colorado has in place a set of requirements which, in conjunction with federal guidelines regarding students whose primary or home language is other than English, provide the framework for LEP student identification, assessment, service delivery, placement, review, and reclassification/exit.

Legal interpretation of the Civil Rights Act of 1964 and all regulations requires a school district to ensure that it identifies all of its LEP students and provides such students with equal and meaningful access to the district's educational services. The goals of services are to:

- help LEP students achieve competency in the English language;
- enable LEP students to achieve grade level status to the extent they are individually able; and
- enable LEP students to meet or exceed high standards and graduation requirements.

The section to follow outlines a five-step process for identifying and placing LEP students in an appropriate alternative language program that assures them of an equal educational opportunity. Because consideration of LEP students' first and second language proficiency is crucial for decision making, special attention is given to processes for conducting language proficiency assessments.

Procedures for the Identification and Assessment of LEP Students

Step 1 - Identification of Students Whose Primary or Home Language is Other Than English (PHLOTE)

A Home Language Survey must be completed for each student. The Office for Civil Rights suggests that the Home Language Survey contain, at a minimum, the following three questions:

- Is a language other than English used in the home?
- Was the student's first language other than English?
- Does the student speak a language other than English?

A Teacher Language Observation Form or checklist should be completed by all district teachers and support staff (i.e., Title I, ELPA, Title VII) to determine each student's primary or home language. A student must be identified as PHLOTE through a Teacher Language Observation Form or Checklist response or any other documentation from a teacher or other staff member indicating that a student:

- speaks a language other than English;
- understands a language other than English; or
- has a language other than English spoken at home.

A Student Language Survey for secondary students may be used in addition to the Home Language Survey to identify the language or languages to which the student has been exposed.

A student must be identified as PHLOTE when any single response on the Home Language Survey, the Teacher Language Observation Form or checklist, or the Student Language Survey indicates a language other than English.

If the school or district chooses to use the Colorado State ELPA survey to identify PHLOTE students, any student must be identified as PHLOTE whose ELPA Home Language Survey indicates any of the following responses:

- any response other than "English" on question 1; or
- any response other than "E" (only English) on questions 2, 3, or 4.

The results of the Teacher Observation Form or checklist may NOT be used to determine that the student is not PHLOTE if the results of the Home Language Survey indicate otherwise. In essence, if a child is identified as PHLOTE on any survey, form, or checklist, that child is considered PHLOTE.

Step 2 - Assessment of Language Proficiency

Language Proficiency in English

When all responses on the home language questionnaire indicate that English is the only language used by the student, and by an individual in the home, the student is considered an English only speaker. Procedures established by the school district for placement of the general student population should be followed.

If any response on the home language questionnaire indicates the use of a language other than English, by the student or an individual in the home, then further assessment must be conducted to determine the student's English language proficiency level. However, the presence of a language other than English does not automatically signify that the student is not a competent and proficient speaker of English.

Because districts are required to have an alternative language program designed to meet the linguistic and educational needs of LEP students, every PHLOTE student must be tested for English language proficiency when initially identified. Assessment shall be done in all four areas of language: understanding, speaking, reading, and writing to ensure that students' language needs are properly identified and addressed through the district's educational program.

Oral assessment of English language proficiency may be sufficient for PHLOTE students in kindergarten and grade one depending on the district's expectations for those grade levels. However, in grades two through 12, PHLOTE students are expected to have acquired grade-appropriate skills in understanding, speaking, reading, and writing in the English language. Various assessments have been developed expressly for testing proficiency in these four language skill areas. Some examples of language proficiency assessments include the *Idea Proficiency Test (IPT), Language Assessment Scales (LAS)*, and the *Woodcock-Muñoz Language Survey*.

Any PHLOTE student scoring below the publisher's threshold of oral English proficiency should be identified as LEP. Any PHLOTE student in grade two or above who is orally proficient in English but who scores below the test/assessment publisher's threshold for reading or writing proficiency (or the grade level standard) should be identified as LEP.

In cases when a PHLOTE student is unable to respond to a published assessment in English, the district should use an alternative method of assessment to ascertain how much the child understands in English as well as his/her content knowledge in the home language. When an appropriate test does not exist for a particular language, an alternative assessment should be administered in the native language of the child. An educator fluent in English and in the student's language should administer this assessment.

Based on the assessment results in all four English language skills, a student's language proficiency may be classified based on one of the LAU categories as described on the next page. Students who are identified as LEP in any one of the areas of listening, speaking, reading OR writing are considered LEP. The following Lau categories can be determined for an LEP student who:

- comprehends or speaks a language other than English and does not speak English (Lau A);
- comprehends or speaks some English, but whose predominant comprehension and speech is in a language other than English (Lau B);
- comprehends or speaks English and one or more other languages and whose dominant language is difficult to determine (Lau C);
- comprehends or speaks mostly English and another language (Lau D); and
- speaks and understands only English (Lau E).

In addition, in Colorado it is typical for students whose primary or home language is other than English to be classified for purposes of the English Language Proficient Act (ELPA) according to one of three main categories: Non English Proficient (NEP), Limited English Proficient (LEP), or Fully English Proficient (FEP). These determinations should be made using only valid and reliable instruments that follow publisher's recommended guidelines. Additional sources of language proficiency information such as teacher judgment, records reviews, and informal interviews may be also used to support the decisions that were already made through the use of valid and reliable assessment instruments.

For districts that have content standards in place, the assessment of language proficiency should be framed within the language of the standards. For example, standards in reading and writing should be designed so that they contain clear benchmarks describing what *all* students--including students who are limited in English proficiency--should know and be able to do. The assessments that match the standards should describe the range of performance rating categories.

Language Proficiency in the Students' Home Language

Federal guidelines do not require the testing of PHLOTE students in their native (home) language, nor can the results of such testing be used to determine whether students are LEP. Nevertheless, a PHLOTE student may be tested for native language proficiency, in addition to testing for English language proficiency, to assist in determining an appropriate alternative language service placement, especially when students will be placed in a bilingual education program.

Comparison of the results from English language assessments and native language assessments may provide information about PHLOTE students' language dominance and other information that may be useful when prescribing placement. This information is also useful for making instructional decisions and placing students with respect to specific curriculum materials.

Results of native language assessment may not be used to conclude that students do not require alternative language services, nor may the results be used to classify students as NEP, LEP, FEP, or Lau categories A-E. A PHLOTE student who is not proficient in English is LEP, regardless of the degree of proficiency in his or her native language.

Step 3 - Program Placement

Students identified as LEP on objective assessments of language proficiency that measure listening, speaking, reading, and writing must be placed in a sound alternative language program. ESL, structured immersion with ESL methodologies, and bilingual education are examples of alternative language programs that have been recognized as sound by experts in the field.

Sheltered English and native language enrichment instructional approaches are not recognized by experts in the field as sound alternative language programs for LEP students, unless they are used to augment other program models that have been recognized as sound. In its decision making, the district should not only rely on language proficiency information for making program placement decisions. The district should also rely on other diagnostic information such as the student's proficiency in the native language, especially where bilingual education programs are prescribed.

Prior to placing a student in an alternative language program, the school site must notify parents in writing regarding:

- the benefits of the program being offered to the student;
- other program options available;
- parents' rights to visit the program; and
- parents' rights to withdraw the student from the program.

It is required that parent notification be communicated in a language and/or manner which can be understood by them. Parents are not required to respond affirmatively to the notification in order for the student to participate in the district's alternative language program.

Upon receipt of any written instructions from the parent, a district may withdraw an LEP student from a formal alternative language program. Nevertheless, under Civil Rights policy, the district is still obligated to provide appropriate informal means to ensure that the student's English language and academic needs are met.

In cases where testing reveals LEP students have limited skills in their primary language and in English, the district may provide a bilingual education response that develops concepts and proficiency in both languages.

Step 4 - Student Evaluation

On an annual basis, the school must evaluate and document the progress of LEP students' acquisition of English. One way to help ensure that students are properly evaluated is to convene an LEP Student Evaluation Committee (LEPSEC). The LEPSEC is a school committee that is responsible for overseeing the entire student evaluation process.

The composition of the LEPSEC may consist of content-area or general classroom teachers of LEP students, assessment specialists, school building administrators, ESOL/bilingual staff, and members-at-large (i.e., parents, community representatives,

district administrators, high school students, and school psychologists). The duties of the LEPSEC are to:

- ensure full consideration of all students' language background before placement in alternative language programs;
- ensure that systematic procedures and safeguards are in place related to the appropriateness of the identification, assessment, programs, and placement of LEP students;
- make recommendations to school decision makers on professional development for staff and parents regarding LEP student success; and
- review the LEP students' progress in language acquisition and academic achievement on an annual or semi-annual basis.

Districts must establish objective exit criteria to ensure that LEP students are meeting high standards in comparison to their non-LEP peers before exiting from the alternative language program. Students must be assessed to determine if they have developed sufficient English language proficiency in understanding, speaking, reading, and writing to be reclassified as proficient.

Districts may design their programs for LEP students to temporarily emphasize English over other content subjects. While schools with such programs may discontinue special instruction in English language development once LEP students become English proficient, schools are obligated to provide any assistance necessary to remedy academic deficits that may have occurred in other subjects while the student was focusing on learning English.

If a student who is identified as English proficient on a reliable and valid language proficiency test scores below grade level in core academic subjects, the district must assist the student in remediating the deficiencies, either before exiting the student from the alternative language program, or immediately after exiting the student. The OCR requires that exit criteria ensure that former LEP students not be placed into an academic setting for which they are not prepared to function successfully without remedial assistance.

When students are exited from the alternative language program, the district must monitor the progress of those students for a period of two years to determine their success in the regular school program. Students whose inadequate progress can be associated with a decline in English proficiency should be provided academic support through methods which may include temporary placement into an alternative language program.

Step 5 - Program Evaluation

Annually, the district should evaluate the effectiveness of its alternative language program. The district should consider the progress of LEP students in acquiring English and maintaining academic progress. Districts should also evaluate longitudinal data that compares the academic progress of the formerly LEP student who is now fully English proficient with that of other non-LEP students in categories that include grade point averages; achievement test score averages; and rates of retention, dropping out, graduation, and receipt of honors and awards.

A district whose program is not demonstrably effective in meeting the needs of LEP students must modify its program in a timely fashion. For more information on program evaluation, see Chapter 9 of this handbook.

Strategies for the Identification, Assessment, Service Delivery, Placement, Review, and Reclassification/Exit of LEP Students

The five-part process described in the previous section can provide school and district staff with a foundation for decision making regarding how to best identify and serve LEP students. The sections to follow provide suggestions for specific strategies that can be used to implement the five-step process.

Strategies for Identification

Standards and procedures for identifying LEP students must be developed by the district in order to determine which students are from homes in which a primary or home language other than English is spoken. Procedures should include time frames to ensure that all currently- and newly-enrolled students are identified. A Home Language Survey should be distributed to all parents on which they are asked to respond to at least three items: the first language spoken by the child, the language(s) spoken in the home, and the language(s) spoken or understood by the child.

Districts must develop a strategy for the distribution and subsequent collection of the Home Language Survey (HLS) to ensure that it is completed for every student enrolled in the district. Procedures must be in place to receive information from, and share information with parents who do not read or write or who speak a language that district personnel or their translators do not speak or write.

A Teacher Language Observation Form or checklist can supplement the HLS. It is important to note that the Teacher Language Observation Form or Checklist cannot override the information provided by the parent or student on the HLS. Rather, it should be used to augment the HLS. Students should be referred for objective language assessment whenever an HLS or teacher survey or form notes that the student speaks a language other than English or comes from a home in which a language other than English is spoken.

Identification procedures must be effective in identifying all LEP students. In providing equal educational opportunities for LEP students, identifications that are adequate according to the Office for Civil Rights (1996 Draft District Guide) include the following:

- a system is in place for retaining all home language questionnaires in a manner easily accessible by staff (e.g., student cumulative file);
- a system is in place for compiling the names, grades, and schools of all PHLOTE students who must be assessed for English language proficiency (e.g., a roster);
- a person has been designated as being responsible for the distribution, collection, and analysis of all Home Language Surveys at each school; and
- training is provided on appropriate procedures for each person responsible for the distribution, collection, and analysis of the Home Language Surveys.

With identification procedures firmly in place, the next phase--assessment--can be addressed. Identification and assessment should go hand-in-hand. This paves the way for using the results of the identification phase to complement the student assessment.

Strategies for Assessment

Procedures and time frames must be instituted to assess students who are limited in English proficiency. At a minimum, assessment should determine whether LEP students possess sufficient English language skills to participate meaningfully in the regular educational environment. The district must determine whether LEP students can understand, speak, read, and write English. To assess the language and learning of LEP students, educators need to:

- Develop Procedures - Assessments should be consistent with the language of instruction and students' individual linguistic abilities. Whenever possible, assessing learning in the native language should be undertaken to establish appropriate instructional plans. Utilizing bilingual/ESOL program staff to provide detailed information about students' language proficiencies is useful in identifying and/or developing language-appropriate assessments and programs.

  The skills being assessed must be identified and academic knowledge and the skills to be assessed must be distinguished and separated from competency in the English lang-uage. An example of this is on a math test that employs story problems. You must consider whether language use or math computational skills are being assessed. Instructors should be aware that most assessments will actually assess both the content area concepts and the students' language.

  Only if the assessment allows for alteration of administration procedures, administer the assessment by giving instructions orally using the LEP student's native language or using simplified English. Allow students to respond orally using their native language or English. Refer to the publisher's guide for direction on whether it is allowable to alter the administration procedures.

- Consider the Type of Assessment - Utilize language-appropriate alternative forms of assessments to provide students with opportunities to demonstrate both prior knowledge and progress toward the attainment of content standards. Alternative forms of assessment might include portfolios with scoring rubrics; individual and group projects; non-verbal assessments including visuals, drawings, demonstrations, and manipulatives; self-evaluation; performance tasks; and computer-assisted assessments.

- Consider Timing - Consult the test administration manual, and if testing procedures are not standardized, allow time for flexibility in the administration of the assessment to accommodate students' linguistic competencies.

- Determine Whether or Not Assessment Procedures are Fair - Observation and assessments may be used to determine student placement in gifted education, special education, Title I, and other special programs. Care must be taken to ensure that LEP students are fairly and accurately assessed. When conducting assessments, take into consideration the following issues:

  -- whether the student's language proficiency in English and in the native language was determined prior to any assessments being administered;
  -- the length of time the student has been exposed to English;
  -- the student's previous educational history;

- -- whether qualified translators, diagnosticians, and/or trained personnel were used to conduct the assessment;
- -- whether bilingual evaluation instruments were administered by trained bilingual examiners; and
- -- whether, in the absence of reliable native language assessment instruments, appropriate performance evaluations were used.

Language proficiency assessments should evaluate all the necessary language skills for students to be able to achieve high standards at particular grade or age levels. Skills should be assessed using instruments that were developed by experts in language content, test construction, and measurement. Examples of such recognized tests are the IDEA Proficiency Tests, Language Assessment Scales, and the Woodcock-Muñoz Language Survey.

Standardized achievement tests such as the Iowa Test of Basic Skills, the Comprehensive Test of Basic Skills, and the Stanford Achievement Test are used to measure reading comprehension among other areas. These and other tests are acceptable measures if they are normed and validated for the populations and grade levels being assessed. Test publishers provide instructions and recommendations for ensuring that the results of the tests are reliable and valid. While modification of the administration procedures may help to ensure content validity, to avoid invalidating the test, do not change administration procedures unless the publishers specifically state that it is permissible to do so.

When assessing LEP students, educators need to look beyond the student's ability to communicate on the playground, in the hallways, or in the lunchroom to assess their performance toward meeting local or state standards. Guidelines for assessment include the following:

- Examine student educational experiences. This information may provide an immediate clue to the student's abilities in content areas and in the native language. Students who have attended school in their native country are generally cognitively proficient in their native language. With the exception of students who have processing problems, skills and abilities are transferrable from the first language to the second language.

- Students should be asked to read in English. Find out if they can understand the text they are reading, whether they can answer simple questions about the text, and whether they are able to compare and contrast information.

- Older students should be given an assignment to write about something they know (e.g., their family, favorite television show, or favorite food). Judge whether or not the writing is meaningful rather than judging tense, grammar, and word placement. Focus on meaning, not on form.

- Observe LEP students carefully. Determine what coping skills they are using, how they are processing information, and what resources they are relying upon.
  Adapted from LMM News, Indiana Department of Education, Indianapolis, IN. Fall 1990.

The key to the assessment of LEP students is to look beyond communication in social settings. By examining educational history, adapting the testing conditions when appropriate, being aware of what instruments are actually measuring, and conducting and

documenting observed behaviors, it is possible to obtain more accurate assessments of educational achievement.

Assessment results should be used to inform instruction and design alternative language programs. Information on assessment should be maintained in student cumulative records or another accessible location. Student data sheets should be designed to help ensure that each identified LEP student continues to be monitored despite transfers to other services, classrooms, or schools.

Strategies for Service Delivery

While there are a variety of options for the delivery of services to LEP students, the difficult task is deciding which program best suits each student. Like their non-LEP counterparts, LEP students may also require specialized services such as gifted education, Title I, migrant education, or special education.

The use of particular service models or teaching methods must be decided upon by the district or school; however, districts must demonstrate that the alternative language program is designed to ensure the effective participation of LEP students in the educational program based on a sound educational approach. Some of the approaches that are recognized as sound by some experts in the field, include:

- Bilingual/bicultural education - BL/BC education is an instructional program for LEP students that emphasizes English language acquisition while making use of students' native language(s) to promote content area learning (Baker, 1993).

- Transitional bilingual education - TBE programs are designed to provide native language instruction for LEP students for one to three years to build a foundation in literacy and academic content that will facilitate English language and academic development as students acquire the new language. After the transition to English instruction, no further instruction in native language is offered. The goal is to develop English language proficiency for LEP students as soon as possible (Peregoy and Boyle, 1996).

- Structured immersion - SI programs are designed to teach English to LEP students by teaching content in English. The student's home language is not developed through instruction. The goal of this program is English language and literacy development (Peregoy and Boyle, 1996).

- Developmental bilingual education - DBE is designed to maintain students' native language throughout the elementary grades and possibly through middle and high school. It focuses on helping students become fully proficient in oral and written English. The program goals include full bilingualism and biliteracy for English language learners (Peregoy and Boyle, 1996).

- English as a second language - ESL or ESOL is an educational approach in which LEP students are instructed in the use of the English language. This instruction is based on a special curriculum that typically involves little or no use of the native language and is usually taught during specific school periods. For the rest of the school day, the student may be placed in mainstream classrooms or in a bilingual program (NCBE, 1987).

Regardless of the program that a district or school adopts, it must explain the alternative language service models and methods to be used to provide LEP students with equal educational opportunities. The written information to reflect this must include:

- ✔ a general statement that all identified LEP students will receive appropriate alternative language services, based on educational need;
- ✔ for each alternative language service model selected, a written summary of the model, when the services will be implemented at which schools, and the specific grade levels at which the specific services will be implemented;
- ✔ a description of how these services will assist LEP students to become proficient in English;
- ✔ a description of how the services will relate to the district's curriculum in both the regular and the special educational settings; and
- ✔ a description of how the district will meet the English language acquisition and other academic needs of LEP students whose parents or guardians refuse placement in formal alternative language programs.

Alternative language programs should be designed specifically to meet the educational needs of each LEP student to ensure equal and meaningful access to the district's programs. Service delivery planning should also include strategies for supporting instruction delivered in the general classroom.

Regardless of the model selected, classroom practices for LEP students need to be evident in every early childhood, elementary, middle school, and secondary education classroom. A broad range of instructional practices and strategies should be employed in assisting LEP students to learn content area concepts as they learn the English language. To provide effective classroom instruction for students who are limited in English proficiency, educators should employ the practices that follow.

- Use Learner-Centered Classroom Strategies
  - -- give students flexible time for learning;
  - -- teach to different styles including cross-cultural mediation in groups avoiding cultural conflict;
  - -- use content area materials appropriate for the English language proficiency of the students; and
  - -- facilitate student learning in the acquisition and improvement of language, academic, and social skills.
- Use Learner-Centered Instructional Strategies
  - -- design challenging content area assessments tailored to the diverse learning styles, cultural backgrounds, and English language proficiency of students;
  - -- provide linguistically meaningful activities and instruction that allow students to attain or exceed content standards;
  - -- provide direct instruction for language development related to content areas;

- -- develop and provide reading and writing instruction in all content areas that is consistent with the district and school wide language policy;
- -- begin every lesson with an identification and preview of key content vocabulary and concepts and review key concepts and vocabulary in a variety of ways utilizing all modalities;
- -- use team teaching and creative student scheduling to take the best advantage of the language and content expertise of staff;
- -- avoid concurrent translation as it tends to be fragmented and affect students' ability to concentrate and attend to the task at hand;
- -- provide content learning and language use through meaningful activities;
- -- acknowledge that beginning second language learners will be silent learners;
- -- employ a variety of strategies to monitor student comprehension which goes beyond simple yes/no responses; and
- -- provide instruction on how to read course texts, handouts, and other classroom materials.

- Establish a Positive Learning Environment

  - -- establish a safe environment where students are willing to take risks and have fun with language and learning;
  - -- avoid stereotyping or comparing ethnic groups or individual students;
  - -- provide all teachers with instruction and practice in second language strategies that includes the ability to discern essential content area concepts and vocabulary;
  - -- provide professional development to develop culturally appropriate home/school partnerships by teaching communication strategies to staff and parents of LEP students;
  - -- provide all school staff with instruction, understanding, and resources for the affirmation of students' home language and cultural diversity; and
  - -- provide support and commitment to the expectation that LEP students are to meet high content standards.

- Utilize Support Strategies

  - -- use a peer support system to provide peer tutoring and other cultural and social help as needed;
  - -- create partnerships with businesses and community organizations that value bilingualism to provide opportunities for students to apply bilingual skills in corporate internships for LEP students;
  - -- provide comprehensive training on LEP students' education to the entire district staff on topics including first and second language acquisition, culture, sheltering techniques; and
  - -- utilize parents and community resources for linguistic and cultural enrichment.

- Develop New Directions and Expand Existing Programs

  - -- form partnerships with community colleges, open or alternative schools, and adult education classes to meet the needs of older LEP students who have not yet met graduation level standards;
  - -- develop supplemental instructional programs that are offered outside the traditional school day such as before and after school programs. Saturday

enrichment, summer school programs; year round schools with tutorial programs during intermissions; and magnet school programs for second language learners;
- -- develop and support family literacy programs that provide opportunities to develop English language proficiency, literacy, and the attainment of the GED;
- -- support home-school connections that promote parental involvement; and
- -- provide opportunities for families to develop home language proficiency and literacy and GED programs.

- Implement Proactive Personnel Practices

  - -- canvass all district personnel to find untapped bilingual resources;
  - -- recruit bilingual classroom teachers and paraprofessionals;
  - -- recruit and train bilingual/biliterate tutors and volunteers to provide native language and English support for the classroom;
  - -- recruit bilingual, non-instructional support staff (i.e., school office, custodial, central office, transportation);
  - -- provide the services of trained bilingual or ESOL specialists, translators, and interpreters; and
  - -- provide systematic professional development in first and second language acquisition principles and supporting classroom practices.

Strategies for Student Evaluation Including Continuous Review, Reclassification, and Exit Procedures

Ensuring LEP student success requires ongoing safeguards that are embodied in a continuous review of LEP student performance and placement. The planning process should involve the LEP student's parents, general classroom staff who work with the student, bilingual staff, and other school specialists in collaborative decision making about student identification, assessment, placement, and reclassification/exit.

The process for reclassification of LEP students from one level to another, from one program to another, and from one service to another should use appropriate assessment instruments and vary from district to district and from school to school. It is important that multiple criteria are used for decision making and, to the extent possible, that students are assessed in English and in their native language. Instruments and procedures that measure all four areas: comprehension, speaking, reading, and writing are to be used. A few of the possible sources of data may include:

- student observation documented through anecdotal records, observation logs, or journals;
- Home Language Surveys;
- teacher judgment that is anchored to specific behavior or achievement indicators;
- student performance portfolios;
- developmental or achievement checklists;
- language samples, surveys, and language proficiency tests;
- parent, teacher, or student questionnaires; and
- curriculum-imbedded assessments, diagnostic tests, and formal or informal content-specific achievement tests.

Once the data sources for reclassification have been identified, criteria should be established for the reclassification, reassignment to other alternative language programs, or exit and monitoring if students have become sufficiently proficient in English to allow them to learn in an all-English classroom. Regardless of the procedures that are used, a team of decision makers should consist of those individuals who are familiar with the LEP student and his/her performance (i.e., parent, classroom teacher, ESOL teacher), as well as individuals who are familiar with assessment, ESOL techniques, and placement resources and services.

Krashen (1996) describes a model for gradual exit for LEP students in which they are exited into the mainstream program, subject by subject, as they are becoming increasingly ready to understand the English language input. As students reach what he terms the "threshold" for a particular subject matter, they proceed to receive instruction in English in that subject matter, beginning with sheltered instruction while continuing with support in the native language.

Exhibit 6 provides a visual representation for a gradual exit plan that gives LEP students language instruction and support while they are learning the content areas. This is one example of a model for exit and could be modified by districts/schools as appropriate. It should be noted that this is a bilingual model that develops the first language (L1) first and uses it as a base for transfer to the second language (L2). Exit guidelines would need to be tuned to the specific instructional model (e.g., ESL/ESOL, structured immersion, bilingual education) that the district/school uses.

Exhibit 6
Guidelines for Gradual Exit From Alternative Language Programs
to Mainstream English Instruction

LEP Student's English Language Level	Mainstream Classes that the LEP Student Takes	ESL and Content Areas Supported Through Sheltered English	Content Area Classes and Language Development Support
Beginning	Art, Music, PE	ESL	All core subjects
Intermediate	Art, Music, PE	ESL, Math, Science	Language Arts, Social Studies
Advanced	Art, Music, PE, Math, Science	ESL, Language Arts, Social Studies	Continuing L1 Development
Mainstream	All subjects	n/a	Continuing L1 Development

From: Krashen, S. (1996). A Gradual Exit, Variable Threshold Model for LEP Children. NABE News.

Because appropriate strategies for evaluation are provided in detail in *Chapter 9, Evaluation*, discussion is deferred to later in this handbook. With the educational decision making processes for LEP students firmly in place (including the determination and communication of processes for LEP student identification, assessment, service delivery, placement, review, and reclassification/exit), schools and districts can direct their attention to effective instructional practices for LEP students.

Chapter 6 addresses both survival skills for districts, schools, and teachers of LEP students and ways to modify and enhance instruction to best meet student needs.

6

Effective Instructional Practices for LEP Students

A number of strategies and methods which experience and research have demonstrated works best for facilitating the learning of LEP students. Because students' learning styles, interests, and levels of skills and proficiency are different, it is usually necessary to employ different procedures to best meet individual needs. Regardless of the strategies and methods that are used, there are essential practices that provide a foundation for LEP student success. These are related to language instruction, classroom practices, and the rights and responsibilities of students as summarized below.

- Areas of essential learning related to language include: an understanding of thoughts and rhetorical patterns; listening with comprehension; speaking with clarity; reading for understanding; writing for effectiveness; social and academic language; mechanics including phonics, spelling, grammar, and the semantic aspects of the second language; content area and technical vocabulary, idiomatic expressions, and commonly used phrases; and note taking and test taking skills.

- Classroom skills and strategies include: expressing opinions and thoughts, seeking and interpreting feedback, understanding strengths and capitalizing on those strengths, employed active learning strategies, working individually and cooperatively, asking for help, and taking risks in learning and language production.

- The rights and responsibilities of LEP students include: learning about attendance, discipline, and all other school and district policies; learning about grading, standards, and assessments; learning grievance policies and procedures; and learning strategies and knowledge for successful interaction both within the classroom and school cultures and within the larger society.

The methods by which educators can best facilitate learning for the expanding number of LEP students in their classrooms often are very specific to individual teachers and to the climate and culture of the school. Many educators are skilled in successfully communicating content, modeling learner-centered strategies, and motivating those students acquiring a second language to be self-reliant learners. While these successful teachers may or may not speak the first language of the child, they share several important qualities.

First, they have high expectations for their students with organizational and educational structures that support their students. Secondly, they are able to marshall the human and technological resources to facilitate learning. Next, they establish and maintain a safe, dynamic, interactive, print-rich classroom environment in which students can work in small cooperative groups with peers, independently, and with adults. Finally, they have a commitment to their own professional development.

In considering effective instruction, strategies for LEP student success can be clustered in the areas of survival skills--what to do when the child first enters the school or classroom--and instructional strategies--how to modify teaching to accommodate the needs of linguistically diverse learners. Clearly, increasing educators' capacities in these areas requires targeted staff development that allows for modeling, practice, and reflection. Increased capacity should be directed not only at the individual teacher but also at the entire school and district.

Survival Skills

When new students who are limited in English proficiency show up at the office, schools should have procedures in place to make the child's first experience a positive one. Schools that neither have bilingual programs in place, nor staff who are bilingual and can assist the child in making the initial adjustment, have an even greater need to plan ahead to facilitate LEP student success.

This section on *Survival Skills* offers some suggestions for helping teachers who do not speak the child's home language overcome the initial hurdles that occur in basic communica-tion. These suggestions can assist teachers when the activities and plans that had always worked when all of their students spoke English no longer suffice. Very often, teachers find themselves frustrated by their inability to be understood, reluctant to accept responsibilities for LEP students' achievement, and eager to relegate instructional duties to ESOL teachers, native language tutors, and/or support staff who are bilingual.

To appropriately welcome LEP students and help make their classrooms inviting, teachers must help students develop a sense of belonging by modeling for the entire class how to value and celebrate diversity. Suggestions for classroom teachers' survival and success follow.

1. Welcome the student with a smile and a warm greeting. Remember it is *how* you say what you say that often carries the greatest impact. Using paraprofessionals, volunteers, or other students in the classroom, let the student know that s/he is an important part of the class with something unique to contribute. Ask questions about the child's background, experiences, and preferences. Find things that the child has in common with others in the class--something as simple as the commonality of wearing the same color shoes or jacket. Demonstrate to the class how they should welcome new students and help to make them feel at home in the classroom.

2. Establish a "Welcome Wagon" Program. As a class project, prepare to welcome new students with a basket, bag, or backpack that contains educational materials. The Welcome Wagon gift could include a class dictionary with commonly used words and phrases; school supplies; a map of the school and the area; and other materials either donated or provided through fundraising.

3. Make a point of correctly pronouncing and learning the student's name. Practice the student's first and last names until you have them mastered. Remember, you only have a couple of new words to learn while the LEP student has thousands. Ask the student the name that s/he prefers. Because a person's name has great personal and emotional impact, don't shorten or change names just to make it easier to pronounce.

4. Identify a classmate to serve as the student's Peer Support Partner (PSP). Set up a volunteer program in which you provide structured training to students to serve as PSPs. Training can include the basics of interpersonal communication, logistics of providing school tours, and strategies for "simplifying" English.

5. Contact local universities as a resource. Often, universities can identify students who might be interested in volunteering as native language translators or tutors. Some even award college credit for community service. Initially, it takes time to build these collaborative ties with universities and integrate students into the classroom routine; however, it is well worth the investment.

6. Find out all you can about the student. A student's history can be an important source of information to help you make instructional decisions, i.e., has the student been in school before, how well can s/he read in the first language, what special achievements or honors have been earned. Information about the student's language, culture, and home life can be determined by using an interpreter or parent volunteer to help you speak with the parents.

7. Set up a language learning center. Language learning centers are places where the second language learner can explore print materials, listen to tapes, and work with picture vocabulary cards. For very new speakers of English, borrow materials for the center from early elementary classrooms to ensure that the vocabulary is not too difficult. Set up cassette tape recorders with blank tapes for students to practice.

8. Provide direct, explicit ESL instruction. Talk to experts in your school or district to learn about ESL techniques such as those discussed in the sections to follow. These techniques will be helpful to ensure that new students have the opportunity to learn. A source of information about ESL instruction is the National Clearinghouse for Bilingual Education. NCBE can be reached by calling 1-(800) 321-NCBE.

9. Label Items in the classroom. Visual clues are helpful for the new student to connect the spoken language with specific English vocabulary. Most students need visual clues in order to process spoken words, especially when learning a new language.

10. Be knowledgeable about the student's culture. Make the classroom "friendly" for the new student. Displaying posters and other memorabilia from where the student is from will convey the message that you are interested in them and their experiences.

11. New students should begin the day with the class. Even though new students enroll at various times throughout the day, the school should ask parents to have them return in the morning. This avoids putting the student in the embarrassing situation of interrupting the class and having all the other students focused on him or her.

12. Invite the LEP student to be the Class Messenger. This position of importance will give the student confidence, a sense of belonging, and an identity within your class.

(From Canales, J. and Durón S. When What Used to Work Isn't Enough: Success for Second Language Learners Through Sheltered Instruction. Article submitted to Educational Leadership. Additional suggestions provided by the Bilingual Special Education Staff Cohort, Denver Public Schools).

Instructional Strategies

To determine whether a district or school is operating a program for LEP students that meets federal and state requirements, decision makers should consider whether the alternative instructional program and the educational practices are recognized as sound by experts in the field or whether they are considered a legitimate experimental strategy. Particular instructional strategies should be tailored to the local situation and to the needs of the LEP students that it serves. Knowing which strategies to use in a particular situation is a key to success.

The strategies to follow are suggestions that are based on research that was focused on LEP students, practical, and relatively easy to implement. Specific, effective instructional practices for LEP students who are gifted and talented and who are being considered for placement in special education were discussed in Chapter 2. Two resources that are of particular interest to planning for LEP student success are available through the Colorado Department of Education Special Education Services Unit (*Special Education and Second Language Learners: Meeting the Challenges, Realizing the Opportunities, Working Draft, October 1996*) and the Office for Civil Rights (*Consolidated Guide to the Provision of Equal Educational Opportunities for LEP Students, Draft District Guide, April 1996*).

Providing Native Language Instruction

The most powerful alternative practice as reported by researchers and many successful teachers of LEP students is native language instruction. This practice, often referred to as Bilingual education, emphasize the development of literacy and fluency in the first language and in English. Native language programs vary considerably, depending on the intensity of native language and English instruction and the degree to which LEP students master content and achieve high standards. Typically, native language programs that foster English and the native language may be a full-day program or simply daily time (e.g., one to two hours) that is committed to native language support.

Integrating Language and Content

All students respond to the use of multiple media, the enhancement of their thinking and questioning skills, and the organization of instruction around themes and interaction with materials and human resources. To prepare for the integrated approach, Short (1991) recommends observing classrooms, collaborating with colleagues on particular subjects or courses and the difficulties and demands that they may present for LEP students, examining the content material, selecting a theme, identifying the objectives of the unit, identifying key terms and words, looking for appropriate text materials, and adapting written materials.

Helping LEP Students Adjust to the Classroom

Short (1991) recommends a number of practices to help LEP students adjust to the classroom situation. These include announcing the objectives and activities for each lesson to give students a context for their work; developing and maintaining routines to help LEP students anticipate what will happen without relying solely on language cues; listing and reviewing instructions step-by-step; providing frequent summations of the salient points of the lesson; presenting information in varied ways to reduce the reliance

on language and place the information in a context that is more comprehensible to students; and writing legibly as some students have low levels of literacy, are unaccustomed to the Roman alphabet, or may have visual discrimination difficulties.

Using Multiple Instructional Strategies

Because LEP students have varied language and skill levels, using multiple instructional strategies for mixed ability groupings is recommended. Some examples of strategies include *cooperative learning* in which students are paired and grouped to provide support and to reduce the anxiety of independent learning; *peer tutoring* in which students learn and share among themselves while the teacher is facilitating the learning; *process writing* that allows students to begin with pre-writing activities, review key concepts together as a group, and learn about language in a safe environment; and *discovery learning* and *problem-based learning* that encourage students to investigate topics and discover new information on their own with guidance from the teachers. These techniques rely on teachers to organize data as students identify a problem, hypothesize causes, design procedures, and conduct research.

Checking Student Comprehension of Content

By using strip stories and sentence strips, setting up dialogue journals and reading logs, using drama and role play, and checking comprehension with story summaries, LEP students will more successfully understand the deep meaning and not merely interpret written and spoken English. The Language Experience Approach is another way to check student comprehension of content. In this approach, students have a common experience such as a field trip or a visit to a community agency. After the experience, students dictate to the teacher what happened, work together to organize the written ideas, and make corrections as needed.

Adjusting Teaching Style

By developing a learner-centered approach to teaching, LEP students will have a greater opportunity to interact meaningfully with educational materials as they acquire English and learn content materials. Suggestions for adjusting teaching style include reducing "teacher talk" and increasing student talk and time when they are engaged interactively with other students and with resource materials. Increasing the amount of time in which questioning techniques are used is desirable along with recognizing that students need time and space to be comfortable in producing English. It is also important to demonstrate good language and learning models.

Peregoy and Boyle in *Reading, Writing, and Learning in ESL: A Resource Book for K-12 Teachers* (1996) discuss dozens of classroom practices for LEP student instruction. A few of the strategies that they suggest are listed below. It should be noted that the suggestions to follow are methods, not programs of instruction.

- Sheltered Instruction - Teachers tailor instruction by adjusting the cognitive load, but not the cognitive level or grade-appropriateness of the content. This occurs through simplifying the vocabulary, using visuals and gestures, and slowing down the speed of verbal speech to provide access to core curriculum.

- Group Work - LEP students are grouped to interact with English language models to accomplish a group goal.
- Jigsaws - Students are responsible for one another's learning and help one another in identifying purposes and important concepts.
- Scaffolding - Support and assistance that are provided to LEP students permits them to move from one level of learning to another with proper support and encouragement.
- Oral Discussion - A context-embedded discourse such as show-and-tell occurs during which students are motivated to use oral language to describe objects or events of interest.
- Improvisational Sign Language - Using a dictated story or a well-known story of interest, students create gestures to represent characters and actions to provide their peers with cues for understanding that do not require spoken language.
- Response Groups - Through group work, students share writing with one another, concentrate on what is good in the writing, and help one another improve.
- Directed Listening-Thinking Activity - This activity provides support by modeling how experienced readers make predictions while in the process of reading a passage. The teacher asks questions about the story while students are reading to allow students to predict and summarize what they have read.

While the number of instructional activities are endless, it is important to remember the following six guidelines for working with LEP students as put forth by a national initiative on promoting excellence and ensuring academic success (George Washington University, 1996). These guidelines are helpful to teachers in setting high expectations and challenging performance standards.

Principle #1 - Limited English Proficient students are held to the same high expectations of learning established for all students

Principle #2 - Limited English proficient students develop full receptive and productive proficiencies in English in the domains of listening, speaking, reading, and writing, consistent with expectations for all students.

Principle #3 - Limited English proficient students are taught challenging content to enable them to meet performance standards in all content areas, including reading and language arts, mathematics, social studies, science, the fine arts, health, and physical education, consistent with those for all students.

Principle #4 - Limited English proficient students receive instruction that builds on their previous education and cognitive abilities and that reflects their language proficiency levels.

Principle #5 - Limited English proficient students are evaluated with appropriate and valid assessments that are aligned with state and local standards and that take into account the language acquisition states and cultural backgrounds of the students.

Principle #6 - The academic success of limited English proficient students is a responsibility shared by all educators, the family, and the community.

To support these principles as well as maintain the skills necessary to facilitate the learning of LEP students, professional development is essential. Chapter 7 provides guidelines and resources to support this important activity.

7

Professional Development Guidelines

Without a strong professional development component and appropriate instructional materials, high standards for all students do not have solid support. Professional development needs to take several forms: preservice education for teacher candidates during their university preparation, inservice for new and veteran teachers, and ongoing staff development support that features first language development and second language acquisition, awareness of issues related to the education and success of LEP students, and instructional and support strategies for modifying instruction in the content areas.

High standards for the education of LEP students cannot exist without high standards for professional development. To accomplish this, three important activities should be undertaken by teachers:

- develop an ongoing professional development plan;
- locate resources for professional development; and
- evaluate and follow-up professional development activities.

Years of inservice training have taught us that professional growth involves systematic planning rather than the one-shot, episodic inservice sessions that have characterized past efforts. Wood, et. al. (1981) suggest that staff development should be the totality of educational and personal experiences that contribute toward becoming more competent and satisfied in an assigned professional role. The functions of staff development should be inservice education, organizational development, communication and coordination, leadership, and evaluation. These functions are described in greater detail in Exhibit 7 found on the following page.

Exhibit 7
Staff Development Functions

- Inservice Education--improving staff and parent skills; implementing curriculum and procedures; expanding subject matter knowledge; planning and organizing instruction.
- Organizational Development--building school climate; increasing communication and collaboration; identifying ways to highlight second language learners' unique contributions to classrooms, schools, and the community.
- Communication/Coordination--organizing and providing information about resources for LEP students; assisting with communication among administration, staff, and parents.
- Leadership--providing suggestions for modifying curriculum and instruction to meet LEP student needs; informing others on innovative approaches to instruction; identifying issues, problems, and possible solutions; researching ideas for innovative practices.
- Evaluation--conducting language and content area needs assessments; evaluating resources; evaluating professional development efforts.

In preparing a staff development plan, the first thing to consider is the philosophical context--beliefs about teaching and learning. This information should be used along with the context to determine staff development standards. The National Board for Professional Teaching Standards (NBPTS) published draft standards for English as a New Language certificates for teachers (NBPTS, 1996). The Board has identified 12 important areas for professional development as listed below.

Preparing for Student Learning

1. Knowledge of Students - Accomplished teachers of LEP students draw on their knowledge of human development as mediated by language and culture and their relationships with students to understand their students' knowledge, skills, interests, aspirations, and values.

2. Knowledge of Language Development - Accomplished teachers of LEP students draw on their knowledge of language and language development to understand their students' growth in both their primary and new languages, to develop instructional strategies that promote language development, and to modify the curriculum to best accommodate the needs of new language learners.

3. Knowledge of Culture - Accomplished teachers of LEP students are knowledgeable about and sensitive to the dynamics of culture in general, and their students' cultures in particular, which enables them to understand their students and to structure a successful academic experience for them.

4. Knowledge of Subject Matter - Accomplished teachers of LEP students draw on a comprehensive command of subject matter to establish goals, design curricula and instruction, and facilitate student learning. They do so in a manner that builds on students' linguistic and cultural diversity.

Advancing Student Learning

5. Meaningful Learning - Accomplished teachers of LEP students use a variety of approaches that allow students to confront, explore, and understand important and challenging concepts, topics, and issues in meaningful ways.

6. Multiple Paths to Knowledge - Accomplished teachers of LEP students provide multiple paths to help students develop language proficiency, learn the central concepts in each pertinent discipline and build knowledge to strengthen understanding of the disciplines.

7. Instructional Resources - Accomplished teachers of LEP students select, adapt, create, and use rich and varied resources. They need sound and appropriate instructional materials to be able to effectively teach LEP students.

8. Learning Environment - Accomplished teachers of LEP students establish a caring, inclusive, safe, and linguistically and culturally rich community of learning where students take intellectual risks and work both independently and collaboratively.

9. Assessment - Accomplished teachers of LEP students employ a variety of assessment methods to obtain useful information about student learning and development and to assist students in reflecting upon their own progress.

Supporting Student Learning

10. Reflective Practice - Accomplished teachers of LEP students regularly analyze, evaluate, and strengthen the quality of their practice.

11. Linkages With Families - Accomplished teachers of LEP students create linkages with families that enhance the educational experience of their students.

12. Professional Leadership - Accomplished teachers of LEP students contribute to the growth and development of their colleagues, their school, and the advancement of knowledge in their field.

Once the planning stage is underway, resources should be developed to support the plan. Resources might include print and nonprint materials, videotapes and audiotapes, and computer- and technology-based resources; local, regional, and national staff development opportunities; human resources available in the community, through state or federal agencies, and through regional consortia; and institutions of higher education, libraries, and school resources.

Evaluating and following up professional development is critical to the determination of its success. Assessing the progress each individual has made toward their professional development goals and objectives is important. Self assessment should be augmented with peer reviews and other means for taking stock of professional development success. Exhibit 8 contains information summarized from Imel (1990) that provides guidelines for staff to manage their own professional development.

Exhibit 8
Guidelines for Managing Your Professional Development

- Prepare for professional development activities by defining what is to be learned; deciding how to proceed; selecting methods, activities, and resources; securing your supervisor's support; and thinking through logistical considerations such as time, place, and pacing.
- In developing your plan, begin by writing only 1-2 sentences about what you hope to accomplish and starting no more than 3 objectives to avoid frustration by not attempting too much.
- Be aware that factors such as lack of time, resources, or administrative support may deter or hinder your professional development. Acknowledging that such factors exist is the first step in overcoming them.
- Form a network of individuals who can provide ongoing feedback on the types of changes you are trying to make. The network can include other teachers in your program, your supervisor, and professional colleagues you have met at conferences and staff development activities.
- Attend a professional conference as a part of your plan for professional development. Since conference attendance alone is unlikely to change your performance, develop follow-up and reinforcing mechanisms such as keeping in touch with the people you meet, acquiring and using the resources, and journaling how you have implemented what you learned.
- Enlist the assistance of colleagues at your work place. They can provide the support, resources, and ongoing feedback required to implement new practices.
- Make onsite visits to other programs to enhance both your understanding of teaching practices and your professional network.
- Select one of your peers to be your partner in learning a new technique or procedure. Working in pairs provides an opportunity to practice and receive feedback in a safe environment.
- Join a professional association and become familiar with the resources available through the ERIC system, U.S. Department of Education, and other federally-funded projects.

From: S. Imel. (1990). Managing Your Professional Development: A Guide for Part-Time Teachers of Adults.

Professional development should always be evaluated. If it is worth the time to plan and deliver the professional development, it is well worth the time to evaluate its effectiveness. Evaluation should be done in a variety of ways depending on the nature of the professional development. Staff can use written journals to document the procedures that they are implementing and to record their reflections on what worked and why and what didn't work and why not. Open-ended surveys that ask questions about the effectiveness of professional development provide planners with important feedback about the experiences.

Exhibit 9 contains a rubric-based report card that can be used to examine the effectiveness of planning for staff development. This instrument's strength is in its adaptability for local use, focus on reviewing the various aspects of professional development, and attention to the degree to which each aspect is being implemented as planned.

Exhibit 9
Effective Professional Development (PD) Report Card

10 points	5 points	0 points
1) Program goals and objectives stem from systematic needs assessment and relate to school/district goals	Program goals and objectives relate indirectly to goals and stem from partial needs assessment or to school/district goals	Program goals and objectives are not related to needs assessment or to school/district goals
2) School staff are involved in the selection of goals and the design of PD programs	Staff provide some input in the selection of goals and the design of PD programs	School or district administrators decide on PD with no input from staff
3) Participants' skills and knowledge are assessed and info incorporated into PD	Participants' skills and knowledge are determined, but not addressed in PD	Participants' skills and knowledge are unknown or assumed to be limited
4) Theory/skills are presented with the rationale for change	Theory/skills or rationale (but not both) are presented	Theory/skills and rationale for use are not presented
5) Varied PD activities promote both individual and group learning	Primarily a lecture format with some opportunities for collegial learning	Session is presented entirely in lecture or large group format
6) Modeling, demonstration, and practice are included	Some modeling, demonstration, and practice are included	Modeling, demonstration, and practice are not included
7) Session content and process are evaluated by participants	An evaluation occurs of either content or process, but not both	The evaluation is irrelevant or not conducted
8) Follow-up includes strategies such as peer coaching, access to presenters, and resources	Follow-up is limited to tips from presenters or facilitators	Follow-up is not included in the program design or it is not provided
9) Ongoing program evaluation obtains information on all appropriate constituents	Program evaluation is limited to only 1 or 2 sources, is "one-time only", or not ongoing	Program evaluation is not conducted
10) Evaluation results are used to plan future PD and assess goal accomplishment	Evaluation results are not used in planning future staff development or results are not related to goals	No evaluation results are available for planning purposes

From: Southwest Educational Development Laboratory, Effective Staff Development Report Card, 1990

Professional development should focus on building the competency of each staff member to serve LEP students. The varied professional development needs of district and school building-level administrators, school board members, content area general classroom teachers, paraprofessionals, special education staff, school psychologists, speech and language therapists, bilingual and migrant education staff, ESOL teachers and tutors, and other instructional and support staff can be met though simultaneous and multiple professional development interventions.

Professional development can be matched with each individual's experiences and expertise on a given staff development topic through three distinct levels: awareness, implementation, and capacity building. Professional development opportunities need to be provided that are conducted in a language other than English in schools that offer programs that use children's native language or languages.

While topics for professional development should be identified in response to specific staff needs, the following list represents 15 commonly identified topics often recognized as being helpful to enhance services to LEP students.

- ✓ Identification of LEP and PHLOTE students
- ✓ Cross-Cultural issues in the identification and placement of LEP students
- ✓ Issues in conducting a thorough language assessment
- ✓ Administering and scoring language proficiency tests
- ✓ Accountability Committees
- ✓ Encouraging Parent and Family Involvement in School
- ✓ Curriculum-based assessment
- ✓ Procedures for communicating with parents of LEP and PHLOTE students
- ✓ Building strong assessment committees
- ✓ Student observation techniques
- ✓ Non-discriminatory assessment
- ✓ Effective instructional practices for LEP students
- ✓ Sheltering instruction
- ✓ Transition teaching
- ✓ The identification and assessment of LEP students with learning difficulties
- ✓ Communication and coordination between ESOL and content area teachers
- ✓ Ensuring educational equity for all students

Some resources for professional development include:

- Federally-Funded Assistance Centers serving Colorado and the region include the Southwest Comprehensive Regional Assistance Center in Rio Rancho, NM (800/247-4269) and its satellite office in Aurora, CO (303/743-5556); the Desegregation Assistance Center in Denver (303/492-5417); the BUENO Center for Multicultural Education in Boulder (303/492-5416); and the Mid-Continent Regional Educational Laboratory (303/337-0990).

- Institutions of Higher Education serving Colorado and the region include the University of Colorado at Boulder, University of Colorado at Denver (303/556-2844), University of Northern Colorado (970/351-1890), Colorado State University (970/491-1101), Metropolitan State College (303/556-3876), Adams State College (719/587-7011), Aims Community College (970/330-8008), Front Range Community College (303/466-8811), and Regis University (303/458-4100).

- The Colorado Department of Education. Staff from various units within the state department of education that provide staff development include School Effectiveness (866-6749), Title I (866-6769), Migrant Education (866-6758), and Goals 2000 (866-6635). A list of inhouse and outside educational consultants with expertise in planning for LEP student success are available by contacting the Colorado Department of Education.

Key to the design and delivery of programs for LEP students is inter- and intra-agency coordination and communication. Chapter 8 provides suggestions and resources to assist in maximizing these two inter-related areas.

8

Coordination and Communication

Helping to ensure the success of LEP students is a responsibility that needs to be shared by all educators, families, and communities. In *Promoting Excellence: Ensuring Academic Success for Limited English Proficient Students* (George Washington University Center for Equity and Excellence in Education, 1996), standards statements that support best practices for coordination and communication to assist LEP students to become successful learners are provided as a guide for educators and policy makers. These standards are listed below.

- States work together to develop efficient systems for transferring student records to facilitate the efforts of schools and districts to appropriately place and provide programming for mobile students.
- State certification and licensure requirements assure that the credentialing of teachers addresses the need for second language specialists who are trained in core content areas.
- Colleges and universities incorporate into their teacher preparation and continuing professional development programs training that prepares all teachers to work with LEP students within their classrooms.
- Colleges and universities offer programs to prepare teacher specialists in ESOL and bilingual education to accommodate the growing school enrollment of LEP students.
- States and school districts include LEP students when reporting the indicators of school achievement (including disaggregated student data from appropriate and valid assessments), as one way of monitoring the progress of English language learners.
- School districts use program review and student assessment results to monitor and evaluate the ways in which they provide services to LEP students.
- Schools and districts make appropriate modifications to their programs and assessments as their LEP student population and school structures change.
- School districts provide all teachers with the opportunity to develop the professional tools necessary to work with LEP students through professional development.
- Schools provide teachers with language support when necessary to communicate effectively with parents and guardians who do not speak English.

- Schools use appropriate, relevant, and culturally sensitive ways to include parents and communities as partners in their children's schooling.

- All teachers and administrators in a school understand the value of multilingualism and adopt an active role in educating those students who are learning English as a new language.

- All teachers and administrators in a school recognize that English speaking students can learn from linguistically and culturally diverse students, and they work to develop an environment where all students can acquire skills to work and learn in a multicultural society.

- All teachers and administrators in a school create an environment in which native English speaking students work and learn in a climate of mutual respect with their classmates who are learning English as a new language, so that all can achieve high standards.

- Students who are in the process of learning ESL share responsibility for their own academic success and work with school administrators, teachers, other students, and their parents to achieve at high levels and to demonstrate excellence in all their efforts.

- States, colleges and universities, local districts, schools, teachers, parents, and communities act as advocates for LEP students and work collaboratively to assure their success.

Coordination and communication often involve the restructuring of time and resources to maximize planning for LEP student success. Recognizing the needs of LEP students and establishing a common vision for providing services is often a more simple task than is finding time for working collaboratively. Successful partnerships are formed by individuals and/or organizations with similar or different perspectives working together.

Beginning a successful partnership requires communication among potential participants about the common concerns about LEP student success that led to the idea of developing a partnership; whether a partnership is a good way to address those concerns; the specific roles and responsibilities of all the partners; the organization of the partnership; and the focus of partnership activities.

In successful partnerships, leadership builds commitment and gathers resources. The resources are used to help participants become comfortable with and adept at new ways of performing. To be successful, evaluation and strategic and adaptive planning are needed to ensure that activities meet local needs and conditions.

High quality service delivery requires communication and coordination to establish partnerships that create a comprehensive system of support for LEP students. The key elements in accomplishing sound communication and coordination are:

- resources - The identification and allocation of resources is critical to maximizing services to LEP students. Programs often fail because educators are trying to do too much with too few resources. As schools and programs compete for scarce resources, students do not receive the highest quality education.

- policies - Laws, regulations, standards, guidelines, licensing, certification, and interagency agreements serve as the guiding force behind policies. Clear policies have a profound impact on the ability of schools to serve LEP students and for individuals to work cooperatively to meet mutual goals.

- people - The goal of providing the best possible education for all students is largely dependent on the people involved in the effort. Clearly, the people make the difference--their skills, attitudes, degree of involvement, and experience.

- processes - Actions to establish meaningful and workable processes can be a great catalyst to promote cooperation and communication. When processes are in place, planning is facilitated. Processes are critical to carrying out policies and can have a profound effect on the entire effort.

To plan for LEP student success, coordination with other federal programs should be undertaken such as Goals 2000 of the Educate America Act; Title I (Basic, Even Start, and Migrant Education), Title II, and Title VII of the Improving America's School Act of 1994; Head Start; and the Individuals with Disability Education Act (IDEA). It is important to note that services such as Title I, migrant education, and special education can also be provided in LEP students' native language. There is no obligation to provide services only in English. Again, the alternative language program that is to be provided should be tailored to student needs.

As schools move toward consolidating their efforts to establish school wide programs, intensive coordination is not only desirable, but essential. An example is the initiative Colorado has undertaken which addresses local reform efforts connected with Goals 2000. To receive state funding, these partnership programs require strong community linkages and broad-based collaboration.

The U.S. Department of Education in its Guide to Developing Educational Partnerships (Tushnet, 1993) makes it clear that the structure and goals of programs must fit their context. Information must be openly shared to ensure a good fit. Some of the activities that school/community partnerships may undertake to benefit LEP students include the design, distribution, and summarization of needs assessments; research and development about effective educational practices for LEP students; the development of visions, missions, goals, and objectives to support student success; advocacy and policy development; and resource identification and acquisition. Factors that help coordination and communication include the following:

- ✔ a perception that coordination/communication is needed;
- ✔ positive attitudes and a belief that the benefits outweigh the costs;
- ✔ a reward system for those who reinforce active coordination/communication;
- ✔ common commitment to planning for LEP student success;
- ✔ chances exist for regular and ongoing coordination/communication;
- ✔ compatibility or similarity of organizational structures;
- ✔ leaders favor coordination/communication; and
- ✔ common definitions, ideologies, interests, and approaches to planning for LEP student success.

9

Program Evaluation

The evaluation of programs, practices, and procedures for LEP student involves systematic planning and the establishment of approaches to measure the achievement of pre-established expected outcomes. Evaluation involves aggregating and synthesizing various types and forms of data to learn about whether or not what was designed was successful. Two types of evaluation, formative and summative, are most frequently used to answer questions about programs, practices, services, and procedures.

Formative evaluation (Scriven, 1967) is often employed when new or developing procedures are implemented where evaluation feedback can be employed for improvement purposes. Formative evaluation is ongoing in that data are constantly being gathered, examined, and manipulated to influence decisions about what works and why, and what doesn't work and why not.

Summative evaluation most often serves an accountability function at the end of the school year or at the end of a program. Summative evaluation describes the characteristics and successes of the program, practices, procedures, or activities and the areas in need of improvement. It is employed to make a determination of whether the stated goals and objectives have been met and to support recommendations about whether or not practices should be continued. When used together, formative and summative evaluation can be a powerful tool for making educational decisions and setting policies about programs and practices for LEP students.

Meaningful evaluation can best be accomplished by planning ahead. Evaluation should not require any extraordinary procedures; rather, it should be integrated into the program activities and focused on the particular procedures, materials, programs, practices, or processes that exist. The evaluation planning cycle involves the following steps:

- assessing needs;
- establishing goals and objectives;
- implementing programs, practices, procedures, and activities to meet the goals and objectives;
- assessing the extent to which the objectives have been achieved; and
- using the results of the evaluation for making improvements.

For procedures related to planning and implementing services for LEP students to be evaluable, four questions should be asked. These questions are:

1) Was an adequate assessment of needs conducted?

2) Were the goals and objectives adequately formulated and appropriate to the student needs?

3) Was the design and delivery of services, procedures, practices, and programs adequately described and consistent with the goals and objectives?

4) Were the evaluation questions adequately defined and in keeping with the goals and objectives?

Wilde and Sockey (1995) in *The Evaluation Handbook*, provide examples of needs assessment instruments, goals and objectives, activity statements, and procedural forms. They note that goals should be written after the needs assessment is conducted and should meet four conditions.

- Their meaning should be clear to the people involved.
- They should be agreed upon by educational planners and decision makers.
- They should be clearly identifiable as dealing with an end product.
- They should be realistic in terms of the time and money available (page 38).

An example of a goal for LEP student success might be:

✔ *All students in the district will achieve high standards through participation in an inclusive, student-centered, multicultural curriculum.*

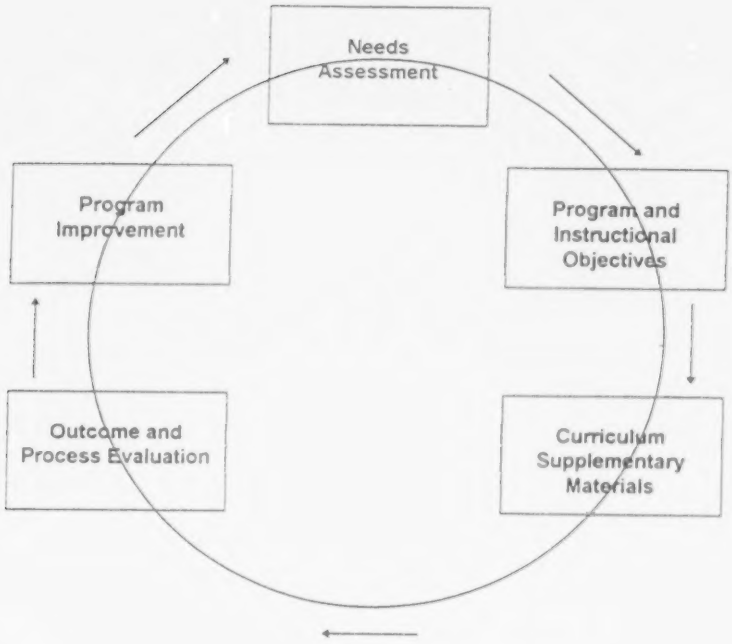
While goals are broad statements, objectives are specific measurable statements that focus on outcomes, performances, behaviors, expectations, and timelines. An example of an objective for LEP student success might be:

✔ *After at least six months of ESL instruction, 90% of LEP students who speak little or no English will increase their language level by one category as measured by the Language Assessment Scales or the Woodcock-Muñoz Language Survey.*

A sound evaluation can provide a rich source of information for teaching and guiding LEP students' learning, assisting in monitoring programs, assisting in gauging the effectiveness of programs for LEP students, contributing to student achievement, and meeting reporting requirements--especially those related to student success in meeting high standards.

To ensure a sound evaluation, the relationship between needs assessment, program or services design, program implementation, and evaluation should be clear. The exhibit to follow provides a visual representation of the evaluation decision cycle.

Exhibit 10
Evaluation Decision Cycle



Through the examination and disaggregation of data, relationships can be explored between students' learning results and particular characteristics of programs, practices, services, and procedures for LEP students. The best way to begin this process is to establish an evaluation planning team. This team should consist of instructional staff, a school building administrator, a staff member trained in techniques for LEP student instruction, and a parent/community representative.

The Evaluation Planning Team should be responsible for determining the activities, person responsible, and timelines for carrying out the evaluation. An evaluation planning calendar that contains this information should be designed and distributed to each member of the team. The evaluation team leader should be responsible for guiding the team in determining the activities to be undertaken and documented in the evaluation planning calendar.

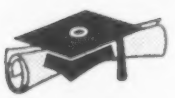
One of the culminating activities of the evaluation team is the evaluation report. This document is a powerful tool for informing and influencing policy decisions and educational practices. A good report is written with the reader in mind. Some reports are brief summaries with bulleted statements highlighting key features. Others are more formal with chapters, headings, and subheadings. The projected audience for the report (i.e., the school board, teachers, parents, community) should dictate the report format and content.

While there is no single best way to organize any report, Exhibit 11 represents one way that might be useful to construct a narrative report for school or district decision makers seeking to increase LEP student success.

Exhibit 11
Elements of a Good Evaluation Report

- Executive Summary - A brief description outlining the major results and recommendations provide the reader with a short summary of the evaluation.
- Goals - A clear statement of the goals sets the stage for the details to follow. A description of how the goals were developed may be helpful.
- Objectives and Activities - The specific objectives to match the goals and the activities associated with each objective tell an important story. Activities may include professional development, planning, program and policy implementation, parental involvement, and other instructional and support aspects.
- Evaluation Design - The questions that need to be answered are highlighted in the evaluation design along with a description of the data and other information that need to be gathered. A description of how the data will be analyzed is also included.
- Results - The results are concisely described using narrative, tables, graphs, and other visual displays.
- Conclusions and Recommendations - The findings of the report are summarized in the conclusions along with a synopsis linking the findings to both goals and objectives. Recommendations flow from what has been observed, recorded, and concluded in this section.

The section to follow provides the reader with references and resources to support planning for LEP student success. Included are legislative requirements and policy guidelines from the Office for Civil Rights and the Colorado Department of Education, a self assessment for meeting LAU requirements, and a bibliography.



APPENDICES

Appendix A - OCR Policy Memoranda
Appendix B - Self Assessment for Meeting Lau Requirements
Appendix C - Bibliography
Appendix D - Summary of the 1991 OCR Policy Update on Schools' Obligations Toward LEP Students
Appendix E - Senate Bill No. 462, English Language Proficiency Act (ELPA)
Appendix F - ELPA Categories and Implementation Philosophy

APPENDIX A

OCR Policy Memoranda

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

RECEIVED
SEP 27 1991
OCT 3 2 PM '91
DEPT. OF EDUCATION
OFFICE FOR CIVIL RIGHTS

TO : OCR Senior Staff

FROM : Michael L. Williams
Assistant Secretary
for Civil Rights

SUBJECT: Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited-English Proficiency (LEP students)

This policy update is primarily designed for use in conducting Lau[1] compliance reviews -- that is, compliance reviews designed to determine whether schools are complying with their obligation under the regulation implementing Title VI of the Civil Rights Act of 1964 to provide any alternative language programs necessary to ensure that national origin minority students with limited-English proficiency (LEP students) have meaningful access to the schools' programs. The policy update adheres to OCR's past determination that Title VI does not mandate any particular program of instruction for LEP students. In determining whether the recipient is operating a program for LEP students that meets Title VI requirements, OCR will consider whether: (1) the program the recipient chooses is recognized as sound by some experts in the field or is considered a legitimate experimental strategy; (2) the programs and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and (3) the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome. The policy update also discusses some difficult issues that frequently arise in Lau investigations. An appendix to the policy discusses the continuing validity of OCR's use of the Castaneda[2] standard to determine compliance with the Title VI regulation.

This document should be read in conjunction with the December 3, 1985, guidance document entitled, "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," and the May 1970 memorandum to school districts entitled, "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11595 (May 1970 Memorandum). It does not

---

[1]Lau v. Nichols, 414 U.S. 563, 94 S.Ct. 786 (1974).

[2]Castaneda v. Pickard, 648 F. 2d 989 (5th Cir. 1981).

supersede either document.[3] These two documents are attached for your convenience.

Part I of the policy update provides additional guidance for applying the May 1970 and December 1985 memoranda that describe OCR's Title VI Lau policy. In Part I, more specific standards are enunciated for staffing requirements, exit criteria and program evaluation. Policy issues related to special education programs, gifted/talented programs, and other special programs are also discussed. Part II of the policy update describes OCR's policy with regard to segregation of LEP students.

The appendix to this policy update discusses the use of the Castaneda standard and the way in which Federal courts have viewed the relationship between Title VI and the Equal Educational Opportunities Act of 1974.

With the possible exception of Castaneda, which provides a common sense analytical framework for analyzing a district's program for LEP students that has been adopted by OCR, and Keyes v. School Dist. No. 1, which applied the Castaneda principles to the Denver Public Schools, most court decisions in this area stop short of providing OCR and recipient institutions with specific guidance. The policy standards enunciated in this document attempt to combine the most definitive court guidance with OCR's practical legal and policy experience in the field. In that regard, the issues discussed herein, and the policy decisions reached, reflect a careful and thorough examination of Lau case investigations carried out by OCR's regional offices over the past few years, comments from the regional offices on a draft version of the policy, and lengthy discussions on the issues with some of OCR's most experienced investigators. Specific recommendations from participants at the Investigative Strategies Workshop have also been considered and incorporated where appropriate.

I. Additional guidance for applying the May 1970 and December 1985 memoranda.

The December 1985 memorandum listed two areas to be examined in determining whether a recipient was in compliance with Title VI: (1) the need for an alternative language program for LEP students; and (2) the adequacy of the program chosen by the recipient. Issues related to the adequacy of the program chosen by the

---

[3]These and other applicable policy documents can be located through OCR's automated Policy Codification System (PCS) by selecting "current" policy and the keywords "Limited-English-Proficient (LEP) Student" (F054). Documents not listed as "current" policy in the PCS should not be used.

recipient will be discussed first, as they arise more often in Lau investigations. Of course, the determination of whether a recipient is in violation of Title VI will require a finding that language minority students are in need of an alternative language program in order to participate effectively in the recipient's educational program.

A. Adequacy of Program

This section of the memorandum provides additional guidance for applying the three-pronged Castaneda approach as a standard for determining the adequacy of a recipient's efforts to provide equal educational opportunities for LEP students.

1. Soundness of educational approach

Castaneda requires districts to use educational theories that are recognized as sound by some experts in the field, or at least theories that are recognized as legitimate educational strategies. 648 F. 2d at 1009. Some approaches that fall under this category include transitional bilingual education, bilingual/bicultural education, structured immersion, developmental bilingual education, and English as a Second Language (ESL). A district that is using any of these approaches has complied with the first requirement of Castaneda. If a district is using a different approach, it is in compliance with Castaneda if it can show that the approach is considered sound by some experts in the field or that it is considered a legitimate experimental strategy.

2. Proper Implementation

Castaneda requires that "the programs and practices actually used by a school system [be] reasonably calculated to implement effectively the educational theory adopted by the school." 648 F. 2d at 1010. Some problematic implementation issues have included staffing requirements for programs, exit criteria, and access to programs such as gifted/talented programs. These issues are discussed below.

Staffing requirements

Districts have an obligation to provide the staff necessary to implement their chosen program properly within a reasonable period of time. Many states and school districts have established formal qualifications for teachers working in a program for limited-English-proficient students. When formal qualifications have been established, and when a district generally requires its teachers in other subjects to meet formal requirements, a recipient must either hire formally qualified teachers for LEP students or require that teachers already on staff work toward attaining those formal qualifications. See Castaneda, 648 F. 2d at 1013. A recipient may not in effect relegate LEP students to second-class status by indefinitely allowing teachers without formal qualifications to teach them while requiring teachers of non-LEP students to meet formal qualifications. See 34 C.F.R. § 100.3(b)(ii).[4]

Whether the district's teachers have met any applicable qualifications established by the state or district does not conclusively show that they are qualified to teach in an alternative language program. Some states have no requirements beyond requiring that a teacher generally be certified, and some states have established requirements that are not rigorous enough to ensure that their teachers have the skills necessary to carry out the district's chosen educational program.[5] Discussed below are some minimum qualifications for teachers in alternative language programs.

---

[4]But cf. Teresa P. v. Berkeley Unified School District, 724 F. Supp. 698,714 (N.D. Cal. 1989) (finding that district had adequately implemented its language remediation program even though many of its bilingual and ESL teachers did not hold applicable credentials; court noted that district probably could not have obtained fully credentialed teachers in all language groups, district was requiring teachers to work toward completion of credential requirements as a condition of employment, record showed no differences between achievement of students taught by credentialed teachers and achievement of students taught by uncredentialed teachers, and district's financial resources were severely limited).

[5]Cf. Castaneda, 648 F. 2d at 1013 (court of appeals remanded for determination as to whether deficiencies in teaching skills were due to inadequate training program (100-hour program designed to provide 700-word Spanish vocabulary) or whether failure to master program caused teaching deficiencies).

If a recipient selects a bilingual program for its LEP students, at a minimum, teachers of bilingual classes should be able to speak, read, and write both languages, and should have received adequate instruction in the methods of bilingual education. In addition, the recipient should be able to show that it has determined that its bilingual teachers have these skills. See Keyes, 576 F. Supp. at 1516-17 (criticizing district for designating teachers as bilingual based on an oral interview and for not using standardized tests to determine whether bilingual teachers could speak and write both languages); cf. Castaneda, 648 F. 2d at 1013 ("A bilingual education program, however sound in theory, is clearly unlikely to have a significant impact on the language barriers confronting limited English speaking school children, if the teachers charged with the day-to-day responsibility for educating these children are termed 'qualified' despite the fact that they operate in the classroom under their own unremedied language disability"). In addition, bilingual teachers should be fully qualified to teach their subject.

If a recipient uses a method other than bilingual education (such as ESL or structured immersion), the recipient should have ascertained that teachers who use those methods have been adequately trained in them. This training can take the form of in-service training, formal college coursework, or a combination of the two. In addition, as with bilingual teachers, a recipient should be able to show that it has determined that its teachers have mastered the skills necessary to teach effectively in a program for LEP students. In making this determination, the recipient should use validated evaluative instruments -- that is, tests that have been shown to accurately measure the skills in question. The recipient should also have the teacher's classroom performance evaluated by someone familiar with the method being used.

ESL teachers need not be bilingual if the evidence shows that they can teach effectively without bilingual skills. Compare Teresa P., 724 F. Supp. at 709 (finding that LEP students can be taught English effectively by monolingual teachers), with Keyes, 576 F. Supp. at 1517 ("The record shows that in the secondary schools there are designated ESL teachers who have no second language capability. There is no basis for assuming that the policy objectives of the [transitional bilingual education] program are being met in such schools").

To the extent that the recipient's chosen educational theory requires native language support, and if the program relies on bilingual aides to provide such support, the recipient should be able to demonstrate that it has determined that its aides have the

appropriate level of skill in speaking, reading, and writing both languages.[6] In addition, the bilingual aides should be working under the direct supervision of certificated classroom teachers. Students should not be getting instruction from aides rather than teachers. 34 C.F.R. § 100.3(b)(1)(ii); see Castaneda, 648 F.2d at 1013 ("The use of Spanish speaking aides may be an appropriate interim measure, but such aides cannot . . . take the place of qualified bilingual teachers").

Recipients frequently assert that their teachers are unqualified because qualified teachers are not available. If a recipient has shown that it has unsuccessfully tried to hire qualified teachers, it must provide adequate training to teachers already on staff to comply with the Title VI regulation. See Castaneda, 648 F. 2d at 1013. Such training must take place as soon as possible. For example, recipients sometimes require teachers to work toward obtaining a credential as a condition of employment in a program for limited-English-proficient students. This requirement is not, in itself, sufficient to meet the recipient's obligations under the Title VI regulation. To ensure that LEP students have access to the recipient's programs while teachers are completing their formal training, the recipient must ensure that those teachers receive sufficient interim training to enable them to function adequately in the classroom, as well as any assistance from bilingual aides that may be necessary to carry out the recipient's interim program.

Exit Criteria for Language Minority LEP Students

Once students have been placed in an alternative language program, they must be provided with services until they are proficient enough in English to participate meaningfully in the regular educational program. Some factors to examine in determining whether formerly LEP students are able to participate meaningfully in the regular educational program include: (1) whether they are able to keep up with their non-LEP peers in the regular educational program; (2) whether they are able to participate successfully in essentially all aspects of the school's curriculum without the use of simplified English materials; and (3) whether their retention-in-grade and dropout rates are similar to those of their non-LEP peers.

Generally, a recipient will have wide latitude in determining criteria for exiting students from an alternative language program,

---

[6]Aides at the kindergarten and first grade levels need not demonstrate reading and writing proficiency.

but there are a few basic standards that should be met. First, exit criteria should be based on objective standards, such as standardized test scores, and the district should be able to explain why it has decided that students meeting those standards will be able to participate meaningfully in the regular classroom. Second, students should not be exited from the LEP program unless they can read, write, and comprehend English well enough to participate meaningfully in the recipient's program. Exit criteria that simply test a student's oral language skills are inadequate. Keyes, 576 F. Supp. at 1518 (noting importance of testing reading and writing skills as well as oral language skills). Finally, alternative programs cannot be "dead end" tracks to segregate national origin minority students.

Many districts design their LEP programs to temporarily emphasize English over other subjects. While schools with such programs may discontinue special instruction in English once LEP students become English-proficient, schools retain an obligation to provide assistance necessary to remedy academic deficits that may have occurred in other subjects while the student was focusing on learning English. Castaneda, 648 F. 2d at 1011.

Special Education Programs

OCR's overall policy on this issue, as initially announced in the May 1970 memorandum, is that school systems may not assign students to special education programs on the basis of criteria that essentially measure and evaluate English language skills. The additional legal requirements imposed by Section 504 also must be considered when conducting investigations on this issue. This policy update does not purport to address the numerous Title VI and Section 504 issues related to the placement of limited English-proficient students in special education programs. Although OCR staff are very familiar with Section 504 requirements, additional guidance on the relationship between Section 504 and Lau issues that arise under Title VI may be helpful. A separate policy update will be prepared on those issues.

Pending completion of that policy update, Lau compliance reviews should continue to include an inquiry into the placement of limited-English-proficient students into special education programs where there are indications that LEP students may be inappropriately placed in such programs, or where special education programs provided for LEP students do not address their inability to speak or understand English. In addition, compliance reviews should find out whether recipients have policies of "no double services": that is, refusing to provide both alternative language services and special education to students who need them. Such

inquiries would entail obtaining basic data and information during the course of a Lau compliance review regarding placement of LEP students into special education programs. If data obtained during the inquiry indicates a potential problem regarding placement of LEP students into special education, the regional office may want to consult headquarters about expanding the time frames for the review to ensure that it can devote the time and staff resources to conduct a thorough investigation of these issues. Alternatively, the region could schedule a compliance review of the special education program at a later date. In small to medium-sized school districts, regional offices may be able to gather sufficient data to make a finding regarding the special education program as part of the overall Lau review.

Gifted/Talented Programs and Other Specialized Programs

The exclusion of LEP students from specialized programs such as gifted/talented programs may have the effect of excluding students from a recipient's programs on the basis of national origin, in violation of 34 C.F.R. § 100.3(b)(2), unless the exclusion is educationally justified by the needs of the particular student or by the nature of the specialized program.

LEP students cannot be categorically excluded from gifted/talented or other specialized programs. If a recipient has a process for locating and identifying gifted/talented students, it must also locate and identify gifted/talented LEP students who could benefit from the program.

In determining whether a recipient has improperly excluded LEP students from its gifted/talented or other specialized programs, OCR will carefully examine the recipient's explanation for the lack of participation by LEP students. OCR will also consider whether the recipient has conveyed these reasons to students and parents.

Educational justifications for excluding a particular LEP student from a specialized program should be comparable to those used in excluding a non-LEP peer and include: (1) that time for the program would unduly hinder his/her participation in an alternative language program; and (2) that the specialized program itself requires proficiency in English language skills for meaningful participation.

Unless the particular gifted/talented program or program component requires proficiency in English language skills for meaningful participation, the recipient must ensure that evaluation and testing procedures do not screen out LEP students because of their limited-English proficiency. To the extent feasible, tests used to

place students in specialized programs should not be of a type that the student's limited proficiency in English will prevent him/her from qualifying for a program for which they would otherwise be qualified.

3. Program Evaluation

In return for allowing schools flexibility in choosing and implementing an alternative language program, Castaneda requires recipients to modify their programs if they prove to be unsuccessful after a legitimate trial. As a practical matter, recipients cannot comply with this requirement without periodically evaluating their programs. If a recipient does not periodically evaluate or modify its programs, as appropriate, it is in violation of the Title VI regulation unless its program is successful. Cf. Keyes, 576 F. Supp. at 1518 ("The defendant's program is also flawed by the failure to adopt adequate tests to measure the results of what the district is doing. . . . The lack of an adequate measurement of the effects of such service [to LEP students] is a failure to take reasonable action to implement the transitional bilingual policy").

Generally, "success" is measured in terms of whether the program is achieving the particular goals the recipient has established for the program. If the recipient has established no particular goals, the program is successful if its participants are overcoming their language barriers sufficiently well and sufficiently promptly to participate meaningfully in the recipient's programs.

B. Need for a formal program

Recipients should have procedures in place for identifying and assessing LEP students. As the December 1985 memorandum stated, if language minority students in need of an alternative language program are not being served, the recipient is in violation of Title VI.

The type of program necessary to adequately identify students in need of services will vary widely depending on the demographics of the recipients' schools. In districts with few LEP students, at a minimum, school teachers and administrators should be informed of their obligations to provide necessary alternative language services to students in need of such services, and of their obligation to seek any assistance necessary to comply with this requirement. Schools with a relatively large number of LEP students would be expected to have in place a more formal program.

Title VI does not require an alternative program if, without such a program, LEP students have equal and meaningful access to the district's programs. It is extremely rare for an alternative program that is inadequate under Castaneda to provide LEP students with such access. If a recipient contends that its LEP students have meaningful access to the district's programs, despite the lack of an alternative program or the presence of a program that is inadequate under Castaneda, some factors to consider in evaluating this claim are: (1) whether LEP students are performing as well as their non-LEP peers in the district, unless some other comparison seems more appropriate;[7] (2) whether LEP students are successfully participating in essentially all aspects of the school's curriculum without the use of simplified English materials; and (3) whether their dropout and retention-in-grade rates are comparable to those of their non-LEP peers. Cf. Keyes, 576 F. Supp. at 1519 (high dropout rates and use of "levelled English" materials indicate that district is not providing equal educational opportunity for LEP students).

If LEP students have equal access to the district's programs under the above standards, the recipient is not in violation of Title VI even if it has no program or its program does not meet the Castaneda standard. If application of the above standards shows that LEP students do not have equal access to the district's programs, and the district has no alternative language program, the district is in violation of Title VI. If the district is implementing an alternative program, it then will be necessary to apply the three-pronged Castaneda approach to determine whether the program complies with Title VI.

II. Segregation of LEP students

Providing special services to LEP students will usually have the effect of segregating students by national origin during at least part of the school day. Castaneda states that this segregation is permissible because "the benefits which would accrue to [LEP] students by remedying the language barriers which impede their ability to realize their academic potential in an English language educational institution may outweigh the adverse effects of such segregation." 648 F. 2d at 998.

OCR's inquiry in this area should focus on whether the district has carried out its chosen program in the least segregative manner

---

[7]For example, when an overwhelming majority of students in a district are LEP students, it may be more appropriate to compare their performance with their non-LEP peers county- or state-wide.

consistent with achieving its stated goals. In other words, OCR will not examine whether ESL, transitional bilingual education, developmental bilingual education, billingual/bicultural education, structured immersion, or any other theory adopted by the district is the least segregative program for providing alternative language services to LEP students. Instead, OCR will examine whether the degree of segregation in the program is necessary to achieve the program's educational goals.

The following practices could violate the anti-segregation provisions of the Title VI regulation: (1) segregating LEP students for both academic and nonacademic subjects, such as recess, physical education, art and music;[8] and (2) maintaining students in an alternative language program longer than necessary to achieve the district's goals for the program.

---

[8]For an example of a program exclusively for newly-arrived immigrants consistent with Title VI, see OCR's Letter of Findings in Sacramento City Unified School District, Compliance Review Number 09-89-5003, February 21, 1991.

APPENDIX: Use of the Castaneda standard to determine compliance with Title VI.

In determining whether a recipient's program for LEP students complies with Title VI of the Civil Rights Act of 1964, OCR has used the standard set forth in Castaneda v. Pickard, 648 F. 2d 989 (5th Cir. 1981). Under this standard, a program for LEP students is acceptable if: (1) "[the] school system is pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy;" (2) "the programs and practices actually used by [the] school system are reasonably calculated to implement effectively the educational theory adopted by the school;" and (3) the school's program succeeds, after a legitimate trial, in producing results indicating that the language barriers confronting students are actually being overcome." Id. at 1009-10.

The Castaneda court based its standard on the Equal Educational Opportunities Act of 1974 (EEOA), P.L. No. 93-380, codified at 20 U.S.C. §§ 1701-1720, rather than on Title VI or its implementing regulation (20 C.F.R. Part 100). The relevant portion of the EEOA (20 U.S.C. § 1703(f)) is very similar to OCR's May 1970 memorandum describing the obligations of districts toward limited-English-proficient students under Title VI of the Civil Rights Act of 1974.[9] In Lau v. Nichols, 414 U.S. 563, 94 S.Ct. 786 (1974), the Supreme Court upheld OCR's authority to establish the policies set forth in the May 1970 memorandum.

In view of the similarity between the EEOA and the policy established in the 1970 OCR memorandum, in 1985 OCR adopted the Castaneda standard for determining whether recipients' programs for LEP students complied with the Title VI regulation. Several courts

---

[9]Section 1703(f) of the EEOA states, in pertinent part, "No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." The pertinent section of the OCR 1970 memorandum states, "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."

have also treated Title VI and the EEOA as imposing the same requirements regarding limited-English-proficient students. See Heavy Runner v. Bremner, 522 F. Supp. 162, 165 (D. Mont. 1981); Rios v. Read, 480 F. Supp. 14, 21-24 (E.D.N.Y. 1978) (considered Title VI, § 1703(f), and Bilingual Education Act of 1974 claims together; used 1975 Lau Remedies[10] to determine compliance); Cintron v. Brentwood Union Free School Dist., 455 F. Supp. 57, 63-64 (E.D.N.Y. 1978) (same); see also Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030 (7th Cir. 1987) (used Castaneda standard for § 1703(f) claim; remanded claim under Title VI regulation without specifying standard to be used in resolving it, except to note that proof of discriminatory intent was not necessary to establish a claim under the Title VI regulation); Idaho Migrant Council v. Board of Education, 647 F.2d 69 (9th Cir. 1981) (Idaho state education agency had an obligation under § 1703(f) and Title VI to ensure that needs of LEP students were addressed; did not discuss any differences in obligations under Title VI and § 1703(f)).

Castaneda itself did not treat Title VI and the EEOA interchangeably, however. Instead, it distinguished between them on the ground that a showing of intentional discrimination was required for a Title VI violation, while such a showing was not required for a § 1703(f) violation. Castaneda, 648 F.2d at 1007. See also Keyes v. School Dist. No. 1, 576 F. Supp. 1503, 1519 (D. Colo. 1983) (court found that alternative language program violated § 1703(f) and elected not to determine whether it also violated Title VI; questioned continuing validity of Lau in light of Bakke and noted that remedying § 1703(f) violation would necessarily remedy any Title VI violation).

Castaneda and Keyes were decided before Guardians Association v. Civil Service Commission of New York, 463 U.S. 582, 607 n.27, 103 S. Ct. 3221, 3235 n.27 (1983). In Guardians, a majority of the Supreme Court upheld the validity of administrative regulations incorporating a discriminatory effect standard for determining a Title VI violation).[11] Thus, Castaneda and Keyes do not undermine the validity of OCR's decision to apply § 1703(f) standards to determine compliance with the Title VI regulation.

---

[10]OCR's 1975 Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols.

[11]The applicable Department of Education regulation is 34 C.F.R. § 100.3(b)(2).

A recent California case, however, distinguished § 1703(f) and the Title VI regulation on other grounds. Teresa P. v. Berkeley Unified School Dist., 724 F. Supp. 698 (N.D. Cal. 1989). In analyzing the § 1703(f) claim in Teresa P., the court used the three-part Castaneda standard and determined that the district's program was adequate under that standard. Id. at 712-16. In addressing the claim brought under the Title VI regulation, however, the court stated that plaintiffs had failed to make a prima facie case because they had not alleged discriminatory intent on the part of the defendants, nor had they "offered any evidence, statistical or otherwise," that the alternative language program had a discriminatory effect on the district's LEP students. Id. at 716-17.

In Teresa P., the district court found that the district's LEP students were participating successfully in the district's curriculum, were competing favorably with native English speakers, and were learning at rates equal to, and in some cases greater than, other LEP students countywide and statewide. 724 F. Supp. at 711. The court also found that, in general, the district's LEP students scored higher than the county and state-wide average on academic achievement tests. Id. at 712. Given these findings, the dismissal of the Title VI claim in Teresa P. can be regarded as consistent with OCR's May 1970 and December 1985 memoranda, both of which require proof of an adverse impact on national origin minority LEP students to establish a violation of the Title VI regulation.[12]

Neither Teresa P. nor any other post-Castaneda case undermines OCR's decision to use the Castaneda standard to evaluate the legality of a recipient's alternative language program. OCR will continue to use the Castaneda standard, and if a recipient's alternative language program complies with this standard the recipient will have met its obligation under the Title VI regulation to open its program to LEP students.

Attachments
As Stated

---

[12]A Ninth Circuit case also treated § 1703(f) and Title VI claims differently, but in such a terse fashion that it cannot be determined whether these differences would ever have a practical effect. See Guadalupe Org. v. Tempe Elementary School Dist. No. 3., 587 F. 2d 1022, 1029-30 (9th Cir. 1978) (court found that maintenance bilingual/bicultural education was not necessary to provide students with the "meaningful education and the equality of educational opportunity that [Title VI] requires"; court also found that districts did not have to provide maintenance bilingual/bicultural education to be deemed to have taken "'appropriate action to overcome language barriers that impede equal participation by its students in its instructional program'" (quoting § 1703(f)).

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

APR 6 1990

TO : OCR Senior Staff

FROM : William L. Smith
Acting Assistant Secretary
for Civil Rights

SUBJECT: Office for Civil Rights Policy Regarding the Treatment of National Origin Minority Students Who Are Limited-English Proficient

I have recently received a number of inquiries regarding the Office for Civil Rights' (OCR) policy related to making determinations of compliance under Title VI of the Civil Rights Act of 1964 as regards the treatment of national origin minority students who are limited-English proficient (language minority students). In responding to these inquiries, I am aware that our existing policy and procedures were issued several years ago and may be in need of updating. In fact, the Policy and Enforcement Service (PES) will issue such an update during the third quarter of FY 1990.

Until that document is available, you can, of course, continue to follow our current policy documents available to you. The May 25th Memorandum, as affirmed by the Supreme Court in the Lau v. Nichols decision, 44 U.S. 653 (1974), provides the legal standard for the Education Department's Title VI policy concerning discrimination on the basis of national origin. The procedures OCR follows in applying this legal standard on a case-by-case basis are set forth in a document issued to OCR staff on December 3, 1985, entitled, OCR's Title VI Language Minority Compliance Procedures (copy attached).

In developing its policy update, PES staff will review the cases we have investigated over the past few years, in addition to examining the case law, to determine where additional guidance may be needed. It will be helpful for PES attorneys to discuss various aspects of these cases with some regional staff who have had substantial recent experience in applying our case-by-case approach. I understand that there have been some excellent investigations carried out under this policy. You will be consulted prior to any discussions on these matters with members of your staff. In the meantime, I urge you to continue to investigate complaints of discrimination against national origin minority students and to conduct compliance reviews on this issue where appropriate.

If you have questions about the application of current policy, or if you have suggestions for policy modifications, you may call Cathy Lewis at 732-1635, or send your information to me in writing.

Attachment

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

THE OFFICE FOR CIVIL RIGHTS' TITLE VI LANGUAGE MINORITY COMPLIANCE PROCEDURES

ISSUE

This discussion provides a description of the procedures followed by the Office for Civil Rights (OCR) in making determinations of compliance with Title VI of the Civil Rights Act of 1964, as regards the treatment of national origin minority students with limited-English proficiency (language minority students) enrolled in educational programs that receive Federal financial assistance from the Department of Education.

BACKGROUND

As part of the Civil Rights Act of 1964, Congress enacted Title VI, prohibiting discrimination on the grounds of race, color or national origin in programs or activities that receive Federal financial assistance. In May 1970, the former Department of Health, Education and Welfare (DHEW), published a memorandum to school districts on the Identification of Discrimination and Denial of Services on the Basis of National Origin (the May 25th Memorandum, 35 Fed. Reg. 11595 - Tab A). The purpose of the May 25th Memorandum was to clarify OCR's Title VI policy on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority students. The May 25th Memorandum stated in part:

> Where inability to speak and understand the English language excludes national origin minority-group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

In 1974, the Supreme Court upheld this requirement to take affirmative steps in the Lau v. Nichols decision, 414 U.S. 653 (1974). The May 25th Memorandum, as affirmed by Lau, continues to provide the legal standard for the Education Department's (the Department) Title VI policy concerning discrimination on the basis of national origin. The Lau decision did not require school districts to use any particular program or teaching method. The opinion of the Court states:

> No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instruction to this group in Chinese is another. There may be others. Id. at 565.

In 1975, the former DHEW promulgated a document designed to describe appropriate educational steps that would satisfy the Supreme Court's Lau mandate (Task Force Findings Specifying Remedies Available For Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols.) These "Lau Remedies" evolved into de facto compliance standards, which allowed undue Federal influence over educational judgments that could and should be made by local and state educational authorities.

In August 1980, the newly-formed Department of Education published a Notice of Proposed Rulemaking (NPRM) that sought to replace the unofficial "Lau Remedies" with a document that would have set forth requirements for all schools enrolling language minority students. The 1980 NPRM proposed bilingual education as the required method of instruction in schools with sufficient numbers of language minority students of one language group.

Subsequently, the Department determined that the proposed regulations were intrusive and burdensome. They were withdrawn on February 2, 1981, and OCR put into effect nonprescriptive interim procedures pertaining to the effective participation of language minority students in the educational program offered by a school district. Under these procedures, OCR reviews the compliance of school districts on a case-by-case basis. Any educational approach that ensures the effective participation of language minority students in the district's educational program is accepted as a means of complying with the Title VI requirements.

Since this compliance approach has been successful, OCR has determined that these procedures provide sufficient guidance for OCR staff and school districts. Accordingly, OCR will continue to follow procedures which allow for a case-by-case determination of a district's compliance status. Set forth below is an updated statement of OCR's current procedures, and a discussion of the analysis applied by OCR in assessing a district's efforts to meet the requirements of Title VI and the May 25th Memorandum.

OCR'S CURRENT PROCEDURES

OCR conducts investigations of the educational services provided for language minority students either as a result of a complaint allegation or through a compliance review. Although the May 25th Memorandum and Lau v. Nichols decision require school districts to "take affirmative steps" to open their instructional programs to language minority students, OCR does not require the submission of a written compliance agreement (plan) unless a violation of Title VI has been established.

The affirmative steps required by the May 25th Memorandum have been interpreted to apply to national origin minority students who are

learning English as a second language, or whose ability to learn English has been substantially diminished through lack of exposure to the language. The May 25th Memorandum does not generally cover national origin minority students whose only language is English, and who may be in difficulty academically, or who have language skills that are less than adequate.

In providing educational services to language minority students, school districts may use any method or program that has proven successful, or may implement any sound educational program that promises to be successful. Districts are expected to carry out their programs, evaluate the results to make sure the programs are working as anticipated, and modify programs that do not meet these expectations.

OCR considers two general areas in determining whether a school district that enrolls language minority students is in compliance with Title VI. These are:

- whether there is a need for the district to provide an alternative program designed to meet the educational needs of all language minority students; and

- whether the district's alternative program is likely to be effective in meeting the educational needs of its language minority students.

The question of need for an alternative program is resolved by determining whether language minority students are able to participate effectively in the regular instructional program. When they are not, the school district must provide an alternative program. In cases where the number of these students is small, the alternative program may be informal (i.e., no formal program description is required.)

The second major area of consideration is whether the district's alternative program is likely to be effective in meeting the educational needs of its language minority students. There is considerable debate among educators about the most effective way to meet the educational needs of language minority students in particular circumstances. A variety of factors influence the success of any approach or pedagogy. These factors include not only individual student characteristics, such as age and previous education, but also school characteristics, such as the number and the concentration of different language groups. OCR staff is not in the position to make programmatic determinations and does not presume to make those decisions.

OCR's deliberations are appropriately directed to determining whether the district has addressed these problems, and has

developed and implemented an educational program designed to ensure the effective participation of language minority students. The following sets forth an analytical framework used by OCR in determining whether a school district's program is in compliance with Title VI in this area.

I. Whether there is a Need for an Alternative Program?

The determination of whether all language minority students in need have been served may be made in a number of ways. For example, a district may establish cut-off criteria for the placement of language minority students in either the regular or alternative programs based on the English language proficiency levels required for effective participation in their regular instructional programs. Alternately, past academic records of language minority students may be used to predict, for example, which new students are likely to require the assistance provided by the alternative program.

Many school districts screen students using information such as a language assessment test, information from parents, or structured interviews, to determine which language minority students may need further assessment and possible placement into an alternative program. The appropriateness of assessment methods and procedures depends upon several variables, such as the number of language minority students in each language group, the ages of these students, the size of the school district, and the availability of reliable assessment instruments in the different languages.

The district may show that the academic performance of language minority students in the regular instructional program indicates that these students do not require the assistance provided by the alternative program. The district may also show that language minority students who need assistance can readily transfer from the regular to the alternative program for the portion of the school day during which assistance is needed.

OCR will find a violation of Title VI if language minority students in need of an alternative program are not being provided such a program. However, the mere absence of formal identification and assessment procedures and of a formal program does not, per se, constitute a violation of Title VI. Regional staff are cautioned to review carefully the school district's reasons for not having such procedures, and the effectiveness of any informal methods that may be used. For example, a school district that has received a recent influx of language minority students may not be reasonably expected to have in place the type of procedures and programs that other districts with more predictable language minority student populations should have. Similarly, a school district with only a small number of language minority students, may not need the

BEST COPY AVAILABLE

formal procedures and programs necessary in districts with much larger numbers of such students. In the past, OCR has worked with such districts, in conjunction with State education agencies, to provide technical assistance in an effort to prevent future Title VI problems.

II. Whether the Alternative Program is likely to be Effective?

A. Is the alternative program based on a sound design?

School districts must demonstrate that the alternative program designed to ensure the effective participation of language minority students in the educational program is based on a sound educational approach.

OCR avoids making educational judgments or second-guessing decisions made by local education officials. Instead, OCR looks at all the available evidence describing the steps taken to ensure that sound and appropriate programs are in place. Example of factors that would be considered are:

- Whether the program has been determined to be a sound educational program by at least some experts in the field.

  An expert in the field can be defined as someone whose experience and training expressly qualifies him or her to render such judgments and whose objectivity is not at issue.

- Whether there is an explanation of how the program meets the needs of language minority students.

  Such an explanation would normally include a description of the program components and activities, along with a rationale that explains how the program activities can be reasonably expected to meet the educational needs of language minority students.

- Whether the district is operating under an approved state plan or other accepted plans.

  Plans that have previously been accepted by OCR as being in compliance with Title VI continue to be acceptable. These plans may be modified by school districts at any time. When comprehensive programs are mandated by state law, OCR will approve such plans, upon request, where it

BEST COPY AVAILABLE

can be demonstrated that the plans provide a sound educational program that will meet the educational needs of language minority students. When a plan applies only to certain grade levels, the acceptance memorandum is limited to those grades covered under the state plan.

B. Is the alternative program being carried out in such a way as to ensure the effective participation of the language minority students as soon as reasonably possible?

Districts are expected to carry out their programs effectively, with appropriate staff (teachers and aides), and with adequate resources (instructional materials and equipment).

- Appropriateness of staff

The appropriateness of Staff is indicated by whether their training, qualifications, and experience are consonant with the requirements of the program. For example, their appropriateness would be questioned if a district has established an English-as-a-Second-Language (ESL) program, but the staff had no ESL training and there was no provision for ESL teacher training.

- Adequacy of resources

The adequacy of resources is determined by the timely availability of required equipment and instructional materials. Limited financial resources do not justify failure to remedy a Title VI violation. However, OCR considers the extent to which a particular remedy would require a district to divert resources from other necessary educational resources and services.

Similarly, districts faced with a shortage of trained teachers, or with a multiplicity of languages, may not be able to meet certain staffing requirements, such as those needed for an intensive ESL program or a bilingual program. OCR does not require a program that places unrealistic expectations on a district.

C. Is the alternative program being evaluated by the district and are modifications being made in the program when the district's evaluation indicates they are needed?

A district will be in compliance with Title VI when it has adopted an alternative educational program that, when viewed in its entirety, effectively teaches language minority students English, and moves then into the regular educational

program within a reasonable period of time. A more difficult compliance determination arises when a district implements an educational approach which, by all available objective measures, does not provide language minority students with the opportunity for effective participation.

For the reasons discussed earlier in this document, OCR approaches this compliance issue with great caution. Since OCR does not presume to know which educational strategy is most appropriate in a given situation, the failure of any particular strategy or program employed by a school district is more properly addressed by school officials. OCR looks to local school officials to monitor the effectiveness of their programs, to determine what modifications may be needed when the programs are not successful after a reasonable trial period, and to implement such modifications. A school district's continued or consistent failure to improve an ineffective alternative program for language minority students may lead to a finding of noncompliance with Title VI.

There are no specific regulatory requirements regarding the data a district must keep on its alternative programs for language minority students. OCR's current approach to determining compliance with Title VI on this issue does not require that new, additional, or specifically designed records be kept. It is expected that a sound educational program will include the maintenance of reasonably accurate and complete data regarding its implementation and the progress of students who move through it.

CONCLUSION

In viewing a school district's compliance with Title VI regarding effective participation of language minority students in the educational program, OCR does not require schools to follow any particular educational approach. The test for legal adequacy is whether the strategy adopted works -- or promises to work -- on the basis of past practice or in the judgment of experts in the field. OCR examines all the available evidence within the analytical framework described, and determines whether the preponderance of evidence supports the conclusion that the district is implementing a sound educational program that ensures the effective participation of its language minority students.

ISSUED INITIALLY ON DECEMBER 3, 1985

REISSUED WITHOUT CHANGE ON APRIL 6, 1990

William L. Smith

William L. Smith
Acting Assistant Secretary
for Civil Rights

Attachment

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT : Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English

language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

APPENDIX B

Self Assessment for Meeting Lau Requirements

Self Assessment for Meeting Lau Requirements

(See Section 5 for More Information)

IDENTIFICATION OF LIMITED ENGLISH PROFICIENT (LEP) STUDENTS

1. What procedures are used for identifying students with a home or primary language other than English?
2. What language proficiency instruments are used? How are these instruments chosen? Is the same instrument used for all language groups?
3. Does the identification instrument presented assess verbal as well as written skills in both English and the home language?
4. What process of parent/community and teacher input is used in identifying LEP students? How are differences between teacher, parent, and other staff recommendations about assessed proficiency levels resolved?
5. Is there a committee or person that reviews, verifies, and approves the identification of LEP students?
6. How many LEP students have been identified per language group? Per grade? Per school?
7. How many LEP students are currently receiving services? Per school? Per grade?
8. What are the top five language groups represented within the district? What are each of their percentages compared to the total LEP student population?
9. What procedure is used to identify parents/families that require translation services?

LANGUAGE ASSESSMENT OF LEP STUDENTS

1. What procedure is used for assessing the language proficiency of each LEP student?
2. If a language assessment instrument is used, what is its degree of reliability and validity? As determined by whom?
3. Who administers the language assessment instrument? Do the test administrators possess the minimum qualifications and skills necessary to properly assess the English and native language proficiency of LEP students? What are the language skills of the testers?
4. What are the criteria for identifying Lau A, B, and C category students?
5. What is the breakdown of Lau A, B, and C students for the top five language groups?

TIME SPENT ON LEP INSTRUCTION

1. How many minutes of English instruction are spent daily with each Lau A, B, C, and non-proficient Lau D category student? How is this time allotment correlated with student need?

2. How much time is spent daily teaching content area concepts in an accessible and meaningful manner?

3. Does each LEP student receive the same amount of instructional time for development of first language skills?

INSTRUCTIONAL GROUPING OF LEP STUDENTS

1. Is the bilingual/ESOL program designed as an in-class model or pull-out program?

2. In the designated classroom(s), are the students primarily grouped individually, in small groups, or large groups?

3. How are LEP students heterogeneously and homogeneously grouped for instructional purposes?

4. Does the designated bilingual/ESOL classroom utilize a room arrangement conducive to interest centers? Is the room arranged in rows?

5. Does the bilingual/ESOL classroom represent the cultural diversity of the students? Are both English and the native language visually displayed on bulletin boards, labels, etc.?

CURRICULUM FOR LEP STUDENTS

1. Does the district have an instructional program in place designed to supplement English language learning for LEP students?

2. Who developed the bilingual/ESOL curriculum? How were these individuals chosen?

3. Are ESL/English alternative language program services systematically provided by qualified teachers?

4. Are teachers delivering the alternative language program instruction qualified/ trained in these methodologies?

5. What training has the staff received on using the bilingual/ESL curriculum?

6. What techniques and methodologies are utilized in designated bilingual/ESL classrooms to enrich and remediate student achievement?

7. Has the content area instruction been modified to allow accessibility of the LEP student?

PLACEMENT OF LEP STUDENTS

1. What are the criteria for placing Lau A, B, C, and non-proficient Lau D students in appropriate educational programs at the elementary, middle, and secondary levels? How are appropriate educational programs determined?

2. What process does the district use to insure that LEP students are not improperly placed in special education classes?

3. Do LEP students have access to gifted and talented programs? How many students are actually participating?

4. Are all LEP students receiving alternative language program instruction? Is the instruction sufficient?

5. What exit criteria are used for mainstreaming LEP students? Are students monitored after exiting alternative language program classes? Is student progress documented during the monitoring process and for how long?

6. Are LEP students provided with content area assistance after exiting alternative language program classes?

TEACHERS OF LEP STUDENTS

1. What are the minimum qualifications necessary to be an instructor in a bilingual or ESOL classroom?

2. How many bilingual or ESL instructors are employed by the district?

3. How many bilingual paraprofessionals and/or teacher aides are working in the classrooms?

4. What criteria are used in identifying and hiring qualified bilingual teacher aides?

5. Currently, how many instructors in the bilingual/ESOL program are speakers of the students' Primary or Home language(s) ?

6. What measures are used to determine bilingual fluency?

7. How many bilingual and/or ESL instructors and aides have had formal instruction in bilingual/ESL education methodologies?

PROFESSIONAL GROWTH OF LEP STAFF

1. Does the district have an inservice plan on bilingual/ESL instruction techniques and theory?

2. Does the district promote, encourage, and/or offer incentives for personnel to obtain ESL endorsements or bilingual certificates?

3. What steps is the district taking to train and/or hire certified and endorsed or otherwise qualified staff for its alternative language program?

EVALUATION OF LEP PROGRAMS, STUDENTS, AND STAFF

1. How are administrators, teachers, and paraprofessionals evaluated? Who establishes the criteria for evaluation?

2. How is evaluation used to improve instructional practices of personnel in the bilingual/ESL program?

3. How is student achievement evaluated? How many LEP students show progression, how many show regression?

4. In the last three years, how many LEP students have dropped out of school compared with the district norm? By language group?

5. In the last three years, how many LEP students have been retained compared with the district norm? By language group?

6. How does the performance of former LEP students compare with their non-LEP peers? Have they gained full access to the curriculum? Are they meaningfully participating in all aspects of the curriculum?

Appendix C

Bibliography

Bibliography

Arizona Department of Education (1992). Unpublished handout. *The language acquisition classroom.* Phoenix, AZ: ADE.

Asher, J. (1981). *Total physical response: Theory and practice.* In H. Winitz (ed.) Native Language and Foreign Language Acquisition. New York: New York Academy of Sciences.

Baker, C. (1993). *Foundations of bilingual education and bilingualism.* Philadelphia PA: Multilingual Matters Ltd.

Brown, R. (1973). *A first language: The early stages.* Cambridge, MA: Harvard University Press.

Canales, J. and Durón, S. (1996). *When what used to work isn't enough: Success for second language learners through sheltered instruction.* Submitted to Educational Leadership.

Chomsky, N. (1986). *Knowledge of Language: Its nature, origin, and use.* New York, NY: Plenum Press.

Christian, D. (1994). *Two-way bilingual education: Students learning through two languages.* Santa Cruz, CA and Washington, D.C.: National Center for Research on Cultural Diversity and Second Language Learning.

Civil Rights Act of 1964. 34 C.F.R.§100.3 (1964).

Clay, M. (1989). Concepts about print: In English and other languages. *The Reading Teacher*, 42(4), 268-277.

Colorado Department of Education (1996). *Colorado consolidated state plan executive summary included in Colorado's consolidated plan, the ED-FLEX waiver section* cited in Introduction to Colorado Accreditation of Schools and School Districts. Denver, CO.

Colorado Department of Education (1996). In Draft - *Special education and students with limited English proficiency: Opportunities and challenges.* Denver, CO.

Colorado Department of Education (1996). Rules of accreditation for schools and school districts. Denver, CO.

Crain, W. (1980). *Theories of development: Concepts and applications* (3rd Edition). Englewood Cliffs, NJ: Prentice Hall.

Crandall, J. (1992). Content-centered instruction in the United States. *Annual Review of Applied Linguistics*, 13, 111-126.

Crandall, J. (1985). *Directions in vocational education for limited English proficient students and adults.* Occasional Paper #109, Columbus, OH: Ohio State University.

Crawford, J. (1995 revised). *Bilingual education: History, politics, theory and practice.* Los Angeles, CA: Bilingual Educational Services, Inc.

Cummins, J. (1984). *Wanted: A theoretical framework for relating language proficiency to academic achievement among bilingual students.* In C. Rivera (ed.) Language Proficiency and Academic Achievement. Philadelphia, PA: Multilingual Matters Ltd.

Cummins, J. (1981). The role of primary language development in promoting educational success for language minority students. In California State Department of Education (Ed.), *Schooling and language minority students: A theoretical framework* (pp. 3-49). Los Angeles: Evaluation, Dissemination and Assessment Center, California State University.

Cummins, J. (1980). *The construct of language proficiency in bilingual education.* In J.E. Alatis (Ed.). Georgetown University roundtable on languages and linguistics (pp. 76-93). Washington, DC: Georgetown University Press.

Cummins, J. (1979). *Cognitive academic language proficiency, linguistic interdependence, optimal age and some other matters.* Working papers in bilingualism, 19, 197-205.

English Language Proficiency Act (ELPA). (ND). Legislation Reporting Forms and General Guidelines. Denver, CO: Colorado Department of Education.

Garcia, E. (1991). *The education of linguistically and culturally diverse students: Effective instructional practices.* Santa Cruz, CA: National Center for Research on Cultural Diversity and Second Language Learning, University of California.

George Washington University Center for Equity and Excellence in Education. (1996). *Promoting Excellence: Ensuring Academic Success for Limited English Proficient Students.* Washington, DC: Georgetown University Press.

Holmes, D. (1995). *An idea book 1994 federal legislation: Forming new partnerships for educating all students to high standards.* Washington, D.C.: National Clearinghouse for Bilingual Education.

Imel, S. (1990). *Managing your professional development: A guide for part-time teachers of adults.* ERIC Clearinghouse on Adult, Career, and Vocational Education. Columbus, OH: The Ohio State University, EDO-CE-90-98.

Indiana Department of Education (1990). LMM News, Indianapolis, IN, Fall, 1990.

Jaynes, P.A.. (1996). Unpublished document *Success for LEP students: Overview of federal and state requirements.* Jefferson County School District, RE-1, Golden, CO.

Krashen, S. (1996). *A gradual exit, variable threshold model for limited English proficient children.* National Association for Bilingual Education NABE News, 9,7, June 15, 1996.

Krashen, S. (1982). *Principles and practice in second language acquisition.* New York, NY: Pergamon Press.

Lacelle-Peterson, M.W. and Rivera, C. (Spring 1994). Is it real for all kids? A framework for equitable assessment policies for English language learners. *Harvard Educational Review*, 4(1), 55-75.

Lambert, W. (1982). *Case for maintaining minority languages and cultures in America.* Oakland, CA: Luso-American Education Foundation.

Lau v. Nichols. 414 U.S. 563 (1974).

Lessow-Hurley, J. (1991). *A common sense guide to bilingual education.* Alexandria, VA: Association for Supervision and Curriculum Development.

Lessow-Hurley, J. (1990). *The foundations of dual language instruction.* New York: Longman.

Lewelling, V. (December, 1992). *Linguistic diversity in the United States: English plus and official English.* EPIC Digest. Washington, DC: National Clearinghouse on Literacy Education.

Lyons, J. (1992). *Legal responsibilities of education agencies serving national origin language minority students.* The Mid-Atlantic Equity Center, The American University: Washington, D.C.

National Board for Professional Teaching Standards (1996). *English as a new language: Draft standards for national board certification.* Washington, DC.

National Clearinghouse for Bilingual Education (1987, Oct-Nov). *Sheltered English: An approach to content area instruction for limited-English proficient students.* Forum, 10 (6), I, 3.

Peregoy, S. (1991). Environmental scaffolds and learner responses in a two-way Spanish immersion kindergarten. *Canadian Modern Language Review*, 47(3), 463-476.

Peregoy, S. and Boyle, O. (1996). *Reading, Writing, and Learning in ESL.* New York, NY: Addison Wesley Longman, Inc.

Piaget, J. (1970). *Piaget's theory.* In P.H. Mussen (Ed.), Handbook of child psychology (4th ed.) (Vol. I, W. Kessen, Ed.). New York, NY: John Wiley, 1983.

Project Talk (1994). *Lesson strategies that work: A curriculum for multilingual students.* Aurora, CO: Aurora Public Schools.

Richard-Amato, P. (1996). *Making it happen: Interaction in the second language classroom.* White Plains, NY: Longman.

Scriven, M. (1967). *The methodology of evaluation.* In R.E. Stake (Ed.), Curriculum evaluation. American Educational Research Association Monograph Series on Evaluation, #1. Chicago, IL: Rand McNally.

Short, D. (1991). *Integrating language and content instruction: Strategies and techniques.* National Clearinghouse for Bilingual Education program information guide series, #7.

Southwest Educational Development Laboratory (1990). Handout: *Effective Staff Development Report Card.* SEDL: Austin, TX.

Snow, M. A. (1986). *Common terms in second language education.* Los Angeles, CA: University of California, Center for Language Education and Research.

Strevens, P. (1977). English for special purposes: An analysis and survey. *Studies in Language Learning*, Vol. 2, No. 1. Urbana Champaign, IL: University of Illinois.

Thomas, W. and Collier, V. (1995). *Language minority student achievement and program effectiveness.* California association for bilingual education newsletter, 17(5), 19, 24.

Title VI of the Civil Rights Act of 1964 and May 25, 1970 Memorandum

Tushnet, Naida (1993). *Guide to developing educational partnerships.* U.S. Department of Education, Office of Educational Research and Improvement. Washington, DC.

U.S. Department of Education (1994). The Improving America's School Act of 1994, Public Law 103-382 Summary Sheets, October 27, 1994.

U.S. Department of Education, Office for Civil Rights (April, 1996). *Draft-Consolidated guide to the provision of equal educational opportunities for LEP students.* Denver, CO. (Note: This technical assistance document contains policy-related explanation of the most commonly-asked questions with answers to help districts achieve compliance).

U.S. Department of Education, Office for Civil Rights. (1980). Title VI, Civil Rights Act of 1964. Federal Register, May 9, 1980. Washington, DC: US Government Printing Office.

U.S. Department of Education, Office for Civil Rights (1970). *May 25, 1970 Memorandum Concerning Title VI of the Civil Rights Act of 1964.*

U.S. General Accounting Office (1994). *A growing and costly educational challenge facing many school districts.* Washington, DC: Author.

Waggoner, D. (July 1994). *Numbers and needs: Ethnic and linguistic minorities in the United States.* Vol 4(4)

Wilde, J. and Sockey, S. (1995). *Evaluation handbook.* Albuquerque, NM: Evaluation Assistance Center-Western Region.

Wood, F.H., Thompson, S., and Russell, Sister Francis. (1981). *Designing effective staff development programs* in Staff Development/Organization Development, ed., Betty Dillon-Peterson. Alexandria, VA: Association for Supervision and Curriculum Development.

Appendix D

Summary of the 1991 OCR Policy Update on Schools' Obligations Toward LEP Students

SUMMARY OF THE 1991 OCR POLICY UPDATE ON SCHOOLS' OBLIGATIONS TOWARD LEP STUDENTS

1. **Limited English Proficient Students:**

   This policy applies to students who are national origin minority and who are limited in English Proficiency (LEP) and unable to participate meaningfully in the district's educational program.

2. **Application of the Policy:**

   i. If the district enrolls LEP students, it must implement a sound educational program for LEP students that includes:

      a) appropriate standards for placing LEP students (cut off scores);
      b) a well-defined curriculum, with necessary books and materials;
      c) qualified and trained staff; and
      d) procedures for evaluating the alternative program and modifying it when it is not successful.

   ii. As a practical matter, the district must identify students whose lack of English language skills limit their effective participation in the regular instruction program by:

      a) implementing a procedure to determine how many LEP students are enrolled in the district's schools;
      b) determining the level of English language proficiency needed to participate effectively in the district's program; and
      c) assessing the extent to which LEP students need assistance to develop skills in listening, speaking, reading, and writing.

3. **Staffing Policy:**

   i. Staff necessary for the program must be in place within a reasonable period of time.

   ii. If a bilingual program is used, teachers should be able to speak, read, and write in both languages and should have received adequate instruction in the methods of bilingual education.

   iii. If other than bilingual education (ESL, immersion, or another program), the district should ensure that teachers have been adequately trained.

4. **Staff Development Policy:**

   i. Staff development training can include inservice training, formal college work, or both. The district should be able to show that it has determined that teachers have mastered the necessary skills.

   ii. If bilingual aides are used, they should have the appropriate level of skill in speaking, reading, and writing in both languages.

   iii. Aides should work under the direct supervision of a certified teacher.

   iv. If qualified teachers are not available, training of existing staff and/or hiring of qualified staff must take place as soon as possible.

5. **Exit Criteria Policy:**

   i. Students should not be exited until they have achieved oral, reading comprehension, and writing proficiency in English so they can participate meaningfully in the regular education program.

   ii. The exit criteria standards must be based on objective standards such as standardized test scores and the district should be able to explain why it has decided that students meeting standards will be able to participate effectively in regular programs.

   iii. At the time of exit, districts should consider whether or not LEP students:

      a) keep up with non-LEP peers;
      b) participate successfully in school program; and
      c) have similar retention in-grade and dropout rates to non-LEP peers.

   iv. Schools may have to remedy academic deficits that may have occurred while focusing on English.

   v. Alternative programs cannot be dead-end tracks.

6. **Program Evaluation Policy:**

   i. Districts must modify programs if students are not successful.

   ii. As a practical matter, districts must periodically evaluate their programs to meet this requirement.

   iii. If a district does not evaluate and modify its program, and the program is not successful, it is in violation of Title VI.

   iv. Success is measured in terms of whether the program is achieving established goals.

   v. If there are no goals, the program is considered successful if students are overcoming the language barrier sufficiently to participate meaningfully in the district's program.

Prepared by John Golden, Ph.D., Aurora Public Schools

Appendix E

Senate Bill No. 462, English Language Proficiency Act (ELPA)

An Act

SENATE BILL NO. 462.

BY SENATORS Meiklejohn, Allshouse, Anderson, Cole, Dodge, Durham, R. Powers, Strickland, Barnhill, Beatty, Fowler, Stockton, Phelps, and P. Powers;
also REPRESENTATIVES Erickson, DeNier, Hamlin, Hume, Lillpop, Traylor, Strahle, Artist, Heim, Shoemaker, Reeves, Rogers, Robb, Neale, Tancredo, Prendergast, Randall, Schauer, Paulson, Spano, Stephenson, Winkler, Kirscht, Herzog, Bledsoe, Boley, DeFilippo, Hinman, Larson, Mielke, Minihan, Spelts, and Younglund.

CONCERNING THE ESTABLISHMENT OF AN ENGLISH LANGUAGE PROFICIENCY PROGRAM IN THE PUBLIC SCHOOLS FOR CHILDREN WHOSE DOMINANT LANGUAGE IS NOT ENGLISH, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 24 of title 22, Colorado Revised Statutes 1973, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 24

English Language Proficiency Act

22-24-101. Short title. This article shall be known and may be cited as the "English Language Proficiency Act".

22-24-102. Legislative declaration. The general assembly hereby finds, determines, and declares that there are substantial numbers of students in this state whose educational potential is severely restricted because a language other than English is their primary means of communication. The general assembly recognizes the need to provide for transitional programs to improve the English language skills of these students. The general assembly declares that, in order to improve educational

BEST COPY AVAILABLE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

and career opportunities for every student in this state, it is the purpose of this article to provide for the establishment of an English language proficiency program in the public schools and to provide for the distribution of moneys to the several school districts to help defray the costs of such program.

22-24-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of education.

(2) "District" means one or more school districts or a board of cooperative services organized and existing pursuant to law but does not include a junior college district.

(3) "Program" means the English language proficiency program created by this article. Design and implementation of programs shall be the function of the districts.

(4) "Student whose dominant language is not English" means a public school student whose academic achievement and English language proficiency are determined by his local school district, using instruments and tests approved by the department, to be impaired because of his inability to comprehend or speak English adequately due to the influence of a language other than English and who is one or more of the following:

(a) A student who speaks a language other than English and does not comprehend or speak English; or

(b) A student who comprehends or speaks some English, but whose predominant comprehension or speech is in a language other than English; or

(c) A student who comprehends and speaks English and one or more other languages and whose dominant language is difficult to determine, if the student's English language development and comprehension is:

(I) At or below the district mean or below the mean or equivalent on a nationally standardized test; or

(II) Below the acceptable proficiency level on an English language proficiency test developed by the department.

(5) "Teacher" means any person certified pursuant to article 60 of this title who is employed to administer, direct, or supervise classroom instruction in a school in this state.

22-24-104. English language proficiency program established - funding. (1) There is hereby established an English language proficiency program for students in kindergarten and grades one through twelve whose dominant language is not English.

(2) The purpose of the program is to provide assistance to districts having students whose dominant language is not English.

(3) No district shall be eligible for more than two calendar years of state entitlement moneys on behalf of a student identified for inclusion in this state-assisted program.

(4) (a) The general assembly shall make an annual appropriation to the department for the implementation of this article. Funding for the program shall be from the department to the districts on a per-student basis. That portion of the annual appropriation scheduled for distribution to the districts shall be paid to the districts upon the determination, pursuant to section 22-24-106 (1) (d), of the number of students in each district to be included in the program.

(b) The general assembly shall annually make a separate appropriation to the department of education to cover the state's share of the estimated cost pursuant to the provisions of this section. If the amount of the appropriation made is less than the total amount determined to be the state's actual share of support to be provided all eligible students pursuant to the provisions of this section, then the amount to be distributed to any district shall be in the same proportion as the amount of the appropriation made bears to such total amount determined to be the state's actual share.

(c) (I) Seventy-five percent of the annual appropriation or the amount needed to fully fund pursuant to this subparagraph (I), whichever is less, shall be used by the districts for students certified to be within section 22-24-103 (4) (a) or (4) (b). No such student shall be funded for more than an amount equal to four hundred dollars per year or an amount equal to twenty percent of the state's average authorized revenue base for the preceding year as annually determined by the department, whichever is greater.

(II) The remainder of the annual appropriation shall be used by the districts for students certified to be within section 22-24-103 (4) (c). No such student shall be funded for an amount greater than two hundred dollars per year or an amount equal to ten percent of the state's average authorized revenue base for the preceding year as annually determined by the department, whichever is greater.

(III) Any appropriated moneys not distributed by the department pursuant to subparagraph (I) of this paragraph (c) may be distributed by the department pursuant to subparagraph (II) of this paragraph (c). Any appropriated moneys not distributed by the department pursuant to subparagraph (II) of this paragraph (c) may be distributed pursuant to subparagraph (I) of this paragraph (c).

BEST COPY AVAILABLE

(5) Each district shall provide the programs for district students whose dominant language is not English; except that districts may cooperate in carrying out the provisions of this article.

(6) Nothing in this article shall be construed to prohibit use of moneys made available under this article by a district for bilingual programs, English-as-a-second-language programs, or any other method of achieving the purposes of this article. Districts conducting such programs shall receive moneys made available under this article only on the basis of the number of students whose dominant language is not English enrolled in such programs.

22-24-105. District - powers and duties. (1) It is the duty of each district to:

(a) Identify, through the observations and recommendations of parents, teachers, or other persons, students whose dominant language may not be English;

(b) Assess such students, using instruments and techniques approved by the department, to determine if their dominant language is not English;

(c) Certify to the department those students in the district whose dominant language is not English;

(d) Administer and provide programs for students whose dominant language is not English.

22-24-106. Department - powers and duties. (1) It is the duty of the department to:

(a) Develop and approve instruments and techniques to be used by districts in identifying eligible students;

(b) Provide assistance, on request, to districts in the identification and assessment of students;

(c) Audit the identification and testing procedures used by the districts and evaluate the effectiveness of the programs conducted by districts;

(d) Determine which students are to be counted as eligible for purposes of calculating the district's entitlement;

(e) Allocate such moneys, out of annual appropriations to the department, on a per-student basis.

(2) The department shall report to the general assembly in January of 1982 and each January thereafter through 1986 on the effectiveness of the English language proficiency program and the

functioning of this article. Such reports shall indicate the numbers of students identified and served under each of the categories described in section 22-24-103 (4). Beginning in January of 1983, the report shall include: The English language proficiency test results and achievement test results of students certified by the districts; identification techniques and problems, with special attention to students certified to be within the category described in section 22-24-103 (4) (c); any recommendations for fulfilling the intent of this article; and such other data and observations as the department deems to be significant in judging the effect of this article.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 1981, the sum of two million eight hundred seventy-eight thousand dollars ($2,878,000), or so much thereof as may be necessary, for the implementation of this act. Of said total sum, seventy-eight thousand dollars ($78,000) shall be for the administrative costs of the English language proficiency program, and two million eight hundred thousand dollars ($2,800,000) shall be for distribution to the school districts for use in conducting such program.

SECTION 3. Effective date. This act shall take effect July 1, 1981.

SECTION 4. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Fred E. Anderson
PRESIDENT OF
THE SENATE

Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Rutenbeck
SECRETARY OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

Appendix F

ELPA Categories and Implementation Philosophy

COLORADO STATE BOARD OF EDUCATION

THE ENGLISH LANGUAGE PROFICIENCY ACT (ELPA)

IMPLEMENTATION PHILOSPHY

The Colorado State Board of Education promotes the following philosophy for implementing the English Language Proficiency Act:

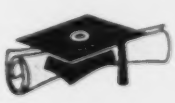
First, the State Board of Education is elected to represent the children in the State of Colorado. We appreciate the contributions made throughout the State's history of people from many different cultures and we hope that, in the teaching of Colorado history to the children in our schools, an effort is made to emphasize the richness of their heritage.

Second, with the influx of immigrants and refugee children, the State Board of Education sees the need for more appropriate assistance to children who have limited proficiency in English. With more than 80 different languages spoken in the schools, school districts need flexibility in determining how to help individual children.

Third, the State Board of Education values cultural differences among children and welcomes opportunities to assist school districts in bringing about mutual respect among students with different backgrounds.

Fourth, the State Board of Education respects the unique characteristics of individual school districts and welcomes the diversity of programs offered by those school districts in addressing specific needs of children. In implementing the English Language Proficiency Act, it is hoped that school districts will use appropriate methods in meeting those needs, such as bilingual education and English as a Second Language.

Fifth, the State Board of Education has great concern for all children who do not achieve as they should due to a lack of proficiency in English. By constitutional mandate, the State Board of Education is responsible for the supervision of education in the State of Colorado, and it is our responsibility to seek the best education for all children in public schools. We believe that the English Language Proficiency Act, with its funding, will help many children obtain this goal.



DEFINITIONS OF A, B, C, D, AND E STUDENTS

A STUDENT*

A student who comprehends or speaks a language other than English and does not speak English.

B STUDENT*

A student who comprehends or speaks some English, but whose predominant comprehension and speech is in a language other than English.

C STUDENT*

A student who comprehends and speaks English and one or more other languages and whose dominant language is difficult to determine.

If the student's English language development and comprehension is:

(i) at or below the district mean, below the national mean or equivalent on a nationally standardized test;

or

(ii) below the acceptable proficiency level on an English language proficiency test approved by the Colorado Department of Education; then, the student may be eligible for funding under the English Language Proficiency Act.

*** Eligible for ELPA funding**

D STUDENT**

A student who comprehends or speaks mostly English and some other language.

E STUDENT**

A student who speaks and understands only English.

** **Not eligible for ELPA funding; however, the district has the responsibility to provide appropriate services.**